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OMNIBUS AGRICULTURAL COMMODITY PROMOTION AND RESEARCH ACT OF 1990

JUNE 28, 1990.—Ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 3664]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 3664) entitled the "Omnibus Agricultural Commodity Promotion and Research Act of 1990", having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Agricultural Commodity Promotion and Research Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—PECAN PROMOTION

Sec. 101. Short title.
Sec. 102. Findings and declaration of policy.
Sec. 103. Definitions.
Sec. 104. Issuance of plans.
Sec. 105. Regulations.
Sec. 106. Required terms in plans.
Sec. 107. Permissive terms in plans.
Sec. 108. Assessments.
Sec. 109. Petition and review.
Sec. 110. Enforcement.
Sec. 111. Investigations and power to subpoena.
Sec. 112. Requirement of referendum.
Sec. 113. Suspension or termination of plan.
Sec. 114. Authorization of appropriations.

TITLE II—MUSHROOMS

Sec. 201. Short title.
Sec. 202. Findings and declaration of policy.
Sec. 203. Definitions.

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Sec. 204. Issuance of orders.
Sec. 205. Required terms in orders.
Sec. 206. Referenda.
Sec. 207. Petition and review.
Sec. 208. Enforcement.
Sec. 209. Investigations and power to subpoena.
Sec. 210. Savings provision.
Sec. 211. Suspension or termination of orders.
Sec. 212. Authorization of appropriations.
Sec. 213. Regulations.

TITLE III—POTATOES

Sec. 301. Short title.
Sec. 302. Findings and declaration of policy.
Sec. 303. Definitions.
Sec. 304. Authority to issue a plan.
Sec. 305. Notice and hearings.
Sec. 306. Required terms in plans.
Sec. 307. Permissive terms in plans.
Sec. 308. Assessments.
Sec. 309. Investigation and power to subpoena.
Sec. 310. Requirement of referendum.
Sec. 311. Suspension or termination of plans.
Sec. 312. Amendment procedure.

TITLE IV—LIMES

Sec. 401. Short title.
Sec. 402. Findings, purposes, and limitations.
Sec. 403. Definitions.
Sec. 404. Issuance of orders.
Sec. 405. Required terms in orders.
Sec. 406. Permissive terms in orders.
Sec. 407. Petition and review.
Sec. 408. Enforcement.
Sec. 409. Investigations and power to subpoena.
Sec. 410. Initial referendum.
Sec. 411. Suspension and termination.
Sec. 412. Authorization of appropriations.
Sec. 413. Regulations.

TITLE V—COTTON

Sec. 501. Short title.
Sec. 502. Findings and declaration of policy.
Sec. 503. Required terms in order; cotton imports.
Sec. 504. Requirements for referenda.
Sec. 505. Suspension and termination of orders.
Sec. 506. Amendments to the order.
Sec. 507. Producer refunds.
Sec. 508. Definitions.

TITLE VI—HONEY

Sec. 601. Short title.
Sec. 602. Definitions.
Sec. 603. Required terms in orders.
Sec. 604. Assessments.
Sec. 605. First reconfirmation referendum.
Sec. 606. Investigations and power to subpoena.
Sec. 607. Conforming amendment to order.

TITLE I—PECAN PROMOTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Pecan Promotion and Research Act of 1990".

SEC. 102. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress finds that—

(1) pecans are a native American nut that is an important food, and is a valuable part of the human diet;

(2) the production of pecans plays a significant role in the economy of the United States in that pecans are produced by thousands of pecan producers, shelled and processed by numerous shellers and processors, and pecans produced in the United States are consumed by millions of people throughout the United States and foreign countries;

(3) pecans must be high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply of pecans;

(4) the maintenance and expansion of existing markets and development of new markets for pecans are vital to the welfare of pecan producers and those concerned with marketing, using, and producing pecans, as well as to the general economy of the United States, and necessary to ensure the ready availability and efficient marketing of pecans;

(5) there exist established State organizations conducting pecan promotion, research, and industry and consumer education programs that are invaluable to the efforts of promoting the consumption of pecans;

(6) the cooperative development, financing, and implementation of a coordinated national program of pecan promotion, research, industry information, and consumer information are necessary to maintain and expand existing markets and develop new markets for pecans; and

(7) pecans move in interstate and foreign commerce, and pecans that do not move in such channels of commerce directly burden or affect interstate commerce in pecans.

(b) POLICY.—It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this title, of an orderly procedure for developing, financing (through adequate assessments on pecans produced or imported into the United States), and carrying out an effective, continuous, coordinated program of promotion, research, industry information, and consumer information designed to—

(1) strengthen the pecan industry's position in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for pecans; and

(3) develop new markets and uses for pecans.

(c) CONSTRUCTION.—Nothing in this title may be construed to provide for the control of production or otherwise limit the right of any person to produce pecans.

SEC. 103. DEFINITIONS.

As used in this title—

(1) BOARD.—The term "Board" means the Pecan Marketing Board established in section 106(b).

(2) COMMERCE.—The term "commerce" means interstate, foreign, or intrastate commerce.

(3) CONFLICT OF INTEREST.—The term "conflict of interest" means a situation in which a member has a direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture, or other business entity dealing directly or indirectly with the Board.

(4) CONSUMER INFORMATION.—The term "consumer information" means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of pecans.

(5) DEPARTMENT.—The term "Department" means the Department of Agriculture.

(6) DISTRICT.—The term "district" means a geographical area of the United States, as determined by the Board and approved by the Secretary, in which there is produced approximately one-fourth of the volume of pecans produced in the United States.

(7) FIRST HANDLER.—The term "first handler" means the first person who buys or takes possession of pecans from a grower for marketing. If a grower markets pecans directly to consumers, such grower shall be considered the first handler with respect to pecans grown by such grower.

(8) GROWER.—The term "grower" means any person engaged in the production and sale of pecans in the United States who owns, or who shares the ownership and risk of loss of, such pecans.

(9) GROWER-SHELLER.—The term "grower-sheller" means a person who—

(A) shells pecans, or has pecans shelled for such person, in the United States; and

(B) during the immediately previous year, grew 50 percent or more of the pecans such person shelled or had shelled for such person.

(10) HANDLE.—The term "handle" means receipt of in-shell pecans by a sheller or first handler, including pecans produced by such sheller or first handler.

(11) IMPORTER.—The term "importer" means any person who imports pecans from outside of the United States for sale in the United States.

(12) INDUSTRY INFORMATION.—The term "industry information" means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the pecan industry.

(13) IN-SHELL PECAN.—The term "in-shell pecan" means a pecan that has a shell that has not been removed.

(14) TO MARKET.—The term "to market" means to sell or offer to dispose of pecans in any channel of commerce.

(15) MEMBER.—The term "member" means a member of the Board.

(16) PECAN.—The term "pecan" means the nut of the pecan tree carya illinoensis.

(17) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(18) PLAN.—The term "plan" means an order issued under section 104.

(19) PROMOTION.—The term "promotion" means any action taken by the Board, pursuant to this title, to present a favorable image of pecans to the public with the express intent of improving the competitive position of pecans in the marketplace and stimulating sales of pecans, including paid advertising.

(20) RESEARCH.—The term "research" means any type of test, study, or analysis designed to advance the image, desirability, usage, marketability, production, product development, or quality of pecans.

(21) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(22) SHELL.—The term "shell" means to remove the shell from an inshell pecan.

(23) SHELLED PECAN.—The term "shelled pecan" means a pecan kernel, or portion of a kernel, after the pecan shell has been removed.

(24) SHELLER.—The term "sheller" means any person who—

(A) shells pecans or has pecans shelled for the account of such person; and

(B) during the immediately previous year, purchased more than 50 percent of the pecans such person shelled or had shelled for such account.

(25) STATE.—The term "State" means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(26) UNITED STATES.—The term "United States" means collectively the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 104. ISSUANCE OF PLANS.

(a) IN GENERAL.—To effectuate the declared policy of section 102(b), the Secretary shall, subject to this title, issue and from time to time amend, plans applicable to growers, grower-shellers, shellers, first handlers, and importers of pecans. Any such plan shall be national in scope. Not more than one plan shall be in effect under this title at any one time.

(b) PROCEDURE.—

(1) PROPOSAL FOR ISSUANCE OF PLAN.—The Secretary may propose the issuance of a plan under this title, or an association of pecan growers or grower-shellers or any other person that will be affected by this title may request the issuance of, and submit a proposal for, such a plan.

(2) PROPOSED PLAN.—Not later than 60 days after the receipt of a request and proposal by an interested person for a plan, or when the Secretary determines to propose a plan, the Secretary shall publish a proposed plan and give due notice and opportunity for public comment on the proposed plan.

(3) ISSUANCE OF PLAN.—After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue a plan, taking into consideration the comments received and including in the plan provisions necessary to ensure that the plan is in conformity with the requirements of this title.

(4) EFFECTIVE DATE OF PLAN.—Such plan shall be issued and become effective not later than 150 days following publication of the proposed plan.

(c) AMENDMENTS.—The Secretary, from time to time, may amend any plan issued under this section. The provisions of this title applicable to a plan shall be applicable to amendments to a plan.

SEC. 105. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this title.

SEC. 106. REQUIRED TERMS IN PLANS.

(a) IN GENERAL.—Each plan issued under this title shall contain the terms and conditions prescribed in this section.

(b) PECAN MARKETING BOARD.—

(1) ESTABLISHMENT.—The plan shall establish a Pecan Marketing Board to carry out the program referred to in section 102(b).

(2) SERVICE TO ENTIRE INDUSTRY.—The Board shall carry out programs and projects that will provide maximum benefit to the pecan industry in all parts of the United States and only generically promote pecans.

(3) BOARD MEMBERSHIP.—The Board shall consist of 15 members, including—

(A) 8 members who are growers;

(B) 4 members who are shellers;

(C) one member who is a first handler and who derives over 50 percent of the member's gross income from buying and selling pecans;

(D) one member who is an importer of pecans into the United States, nominated by the Board;

(E) one member representing the general public, nominated by the Board; and

(F) at the option of the Board, a consultant or advisor representing the views of pecan producers in a country other than the United States who may be chosen to attend Board functions as a nonvoting member.

(4) REPRESENTATION OF MEMBERS.—

(A) GROWER REPRESENTATIVES.—Of the growers referred to in paragraph (3)(A), 2 members shall be from each district.

(B) SHELLER REPRESENTATIVES.—Of the shellers referred to in paragraph (3)(B)—

(i) 2 members shall be selected from among shellers whose place of residence is east of the Mississippi River; and

(ii) 2 members shall be selected from among shellers whose place of residence is west of the Mississippi River.

(C) FIRST HANDLER REPRESENTATIVE.—The first handler representative on the Board referred to in paragraph (3)(C) shall be selected from among first handlers whose place of residence is in a district.

(D) IMPORTER REPRESENTATIVE.—The importer representative on the Board referred to in paragraph (3)(D) shall be an individual who imports pecans into the United States.

(E) PUBLIC REPRESENTATIVE.—The public representative on the Board referred to in paragraph (3)(E) shall not be a grower, grower-sheller, sheller, first handler, or importer.

(5) ALTERNATE FOR EACH MEMBER.—Each member of the Board shall have an alternate with the same qualifications as the member such alternate would replace.

(6) LIMITATION ON STATE RESIDENCE.—There shall be no more than one member from each State in each district, except that the State of Georgia may have 2 growers from such State representing the district that it is in.

(7) MODIFYING BOARD MEMBERSHIP.—In accordance with regulations approved by the Secretary, at least once each 3 years and not more than once each 2 years, the Board shall—

(A) review the geographic distribution of pecan production throughout the United States; and

(B) if warranted, recommend to the Secretary that the Secretary reapportion a district in order to reflect the geographic distribution of pecan production.

(8) SELECTION PROCESS FOR MEMBERS.—

(A) PUBLICITY.—The Board shall give reasonable publicity to the industry for nomination of persons interested in being nominated for Board membership.

(B) ELIGIBILITY.—Each grower and sheller shall be eligible to vote for the nomination of members who represent that class of members on the Board. Growers shall be eligible to vote for the nomination of the first handler members on the board.

(C) SELECTION OF NOMINEES.—Each person referred to in subparagraph (B) shall have one vote. The 2 eligible candidates receiving the largest number of votes cast for each Board position for each class of members shall be the nominees for such position.

(D) CERTIFICATION.—Except for the establishment of the initial Board, the nominations made under subparagraph (C) and subsections (b)(3)(D) and (b)(3)(E) shall be certified by the Board and submitted to the Secretary no later than May 1 or such other date recommended by the Board and approved by the Secretary preceding the commencement of the term of office for Board membership, as established in paragraph (9).

(E) APPOINTMENT.—To each vacant Board position, the Secretary shall appoint 1 individual from among the nominees certified and submitted under subparagraph (D).

(F) REJECTION OF NOMINEES.—The Secretary may reject any nominee submitted under subparagraph (D). If there are insufficient nominees from which to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in the same manner.

(G) INITIAL BOARD.—The Secretary shall establish an initial Board from among nominations solicited by the Secretary. For the purpose of obtaining nominations for the members of the initial Board described in paragraph (3)(A), (B), and (C), the Secretary shall perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate. Nominations for those members of the initial Board described in paragraph (3)(D) and (E) shall be made in accordance with paragraph (3).

(H) FAILURE TO NOMINATE.—If growers and shellers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the plan. If the Board fails to nominate an importer or a public representative, such member may be appointed without a nomination.

(9) TERMS OF OFFICE.—

(A) IN GENERAL.—The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board established under paragraph (8)(G) shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary.

(B) TERMINATION OF TERMS.—Notwithstanding subparagraph (C), each member shall continue to serve until a successor is appointed by the Secretary.

(C) LIMITATION ON TERMS.—No individual may serve more than 2 consecutive 3-year terms as a member.

(D) VACANCIES.—

(i) SUBMITTING NOMINATIONS.—To fill any vacancy created by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that at least 2 eligible nominations for a successor for each such vacancy be submitted by the Board in the manner provided in paragraph (8).

(ii) LACK OF NOMINATIONS.—If at least 2 eligible nominations are not submitted under clause (i), the Secretary shall determine the manner of submission of nominations for the vacancy.

(10) COMPENSATION.—A member of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in the performance of duties for and approved by the Board.

(c) POWERS AND DUTIES OF THE BOARD.—The plan shall define the powers and duties of the Board, which shall include the power and duty—

(1) to administer the plan in accordance with its terms and conditions;

(2) to make regulations to effectuate the terms and conditions of the plan;

(3) to meet, organize, and select from among members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines appropriate;

(4) to establish working committees of persons other than Board members;

(5) to employ such persons, other than Board members, as the Board considers necessary and to determine the compensation and define the duties of such persons;

(6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal period, a recommended rate of assessment under section 108, and a fiscal period budget of the anticipated expenses in the administration of the plan, including the probable costs of all programs and projects;

(7) to develop programs and projects, subject to subsection (d);

(8) to enter into contracts or agreements, subject to subsection (e), to develop and carry out programs or projects of promotion, research, industry information and consumer information;

(9) to carry out research, promotion, industry information, and consumer information, and to pay the costs of such projects with assessments collected pursuant to section 108;

(10) to keep minutes, books, and records that reflect the actions and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;

(11) to appoint and convene, from time to time, working committees comprised of growers, grower-shellers, first handlers, shellers, importers, and the public to assist in the development of research, promotion, industry information, and consumer information programs for pecans;

(12) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this title, only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States,

except that income from any such invested funds may be used for any purpose for which the invested funds may be used;

(13) to receive, investigate, and report to the Secretary complaints of violations of the plan;

(14) to furnish the Secretary with such information as the Secretary may request;

(15) to recommend to the Secretary amendments to the plan; and

(16) to develop and recommend to the Secretary for approval such rules and regulations as may be necessary for the development and execution of programs or projects, or as may otherwise be necessary, to carry out the plan.

(d) PROGRAMS AND BUDGETS.—

(1) SUBMISSION TO SECRETARY.—The plan shall provide that the Board shall submit to the Secretary for approval any program or project of promotion, research, consumer information, or industry information. No program or project shall be implemented prior to its approval by the Secretary.

(2) BUDGETS.—The plan shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of such fiscal year, to submit to the Secretary for approval budgets of its anticipated expenses (including reimbursements under subsection (b)(10)) and disbursements in the implementation of the plan, including projected costs of promotion, research, consumer information, and industry information programs and projects.

(3) INCURRING EXPENSES.—The Board may incur such expenses for programs or projects of research, promotion, consumer information, or industry information, and other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any implementation, administrative, and referendum costs incurred by the Department.

(4) PAYING EXPENSES.—The funds to cover the expenses referred to in paragraph (3) shall be paid by the Board from assessments collected under section 108 or funds borrowed pursuant to paragraph (5).

(5) AUTHORITY TO BORROW.—In order to meet the expenses referred to in paragraph (3), the Board shall have the authority to borrow funds, as approved by the Secretary, for capital outlays and startup costs.

(6) LIMITATION ON SPENDING.—Effective on the date that is 3 years after the date of the establishment of the Board, the Board shall not spend in excess of 20 percent of the assessments collected under section 108 for administration of the Board.

(e) CONTRACTS AND AGREEMENTS.—

(1) IN GENERAL.—To ensure efficient use of funds, the plan shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of programs or projects of pecan promotion, research, consumer information, or industry information, including contracts with grower and grower-sheller organizations, and for the payment of the cost thereof with funds received by the Board under the plan.

(2) REQUIREMENTS.—Any such contract or agreement shall provide that—

(A) the contracting party shall develop and submit to the Board a program or project together with a budget or budgets that shall show estimated costs to be incurred for such program or project;

(B) the program or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(3) GROWER AND GROWER-SHELLER ORGANIZATIONS.—The plan shall provide that the Board may contract with grower and grower-sheller organizations for

any other services. Any such contract shall include provisions comparable to those required by paragraph (2).

(f) BOOKS AND RECORDS OF BOARD.—

(1) IN GENERAL.—The plan shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Board.

(2) AUDITS.—The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) PROHIBITION.—The Board shall not engage in any action to, nor shall any funds received by the Board under this title be used to—

(1) influence legislation or governmental action, other than recommending to the Secretary amendments to the plan;

(2) engage in any action that would be a conflict of interest; or

(3) engage in any advertising that may be false or misleading.

(h) BOOKS AND RECORDS.—

(1) IN GENERAL.—The plan shall require that each first handler, grower-shellers, or importer shall—

(A) maintain and submit to the Board any reports considered necessary by the Secretary to ensure compliance with this title; and

(B) make available during normal business hours, for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out this title, including such records as are necessary to verify any required reports.

(2) TIME REQUIREMENT.—The records required under paragraph (1) shall be maintained for 2 years beyond the fiscal period of the applicability of such records.

(3) CONFIDENTIALITY.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (D), all information obtained from books, records, or reports required to be maintained under paragraph (1) shall be kept confidential, and shall not be disclosed to the public by any person.

(B) DISCLOSURE.—Information referred to in subparagraph (A) may be disclosed to the public only if—

(i) the Secretary considers the information relevant;

(ii) the information is revealed in a suit or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party; and

(iii) the information relates to this title.

(C) MISCONDUCT.—Any disclosure of confidential information in violation of subparagraph (A) by any Board member or employee of the Board, except as required by other law or allowed under subparagraph (B) or (D), shall be considered a violation of this title.

(D) GENERAL STATEMENTS.—Nothing in this paragraph may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the plan or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating the plan, together with a statement of the particular provisions of the plan violated by such person.

(4) AVAILABILITY OF INFORMATION.—

(A) EXCEPTION.—Except as provided in section 112, information obtained under this title may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(B) PENALTY.—Any person knowingly violating this subsection, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if an officer or employee of the Board or the Department, shall be removed from office.

(5) WITHHOLDING INFORMATION.—Nothing in this title shall be construed to authorize the withholding of information from Congress.

(i) USE OF ASSESSMENTS.—The plan shall provide that the assessments collected under section 108 shall be used for payment of the expenses in implementing and administering this title, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this title, except for the salaries of Government employees incurred in conducting referenda.

(j) OTHER TERMS AND CONDITIONS.—The plan also shall contain such terms and conditions, not inconsistent with this title, as determined necessary by the Secretary to effectuate this title.

SEC. 107. PERMISSIVE TERMS IN PLANS.

(a) IN GENERAL.—A plan issued pursuant to this title may contain one or more of the terms and conditions contained in this section.

(b) EXEMPTIONS.—The plan may provide authority to exempt from the plan pecans used for nonfood uses and authority for the Board to require satisfactory safeguards against improper uses of such exemptions.

(c) DIFFERENT PAYMENT AND REPORTING SCHEDULES.—The plan may provide authority to designate different payment and reporting schedules for growers, grower-shellers, first handlers and importers to recognize differences in marketing practices and procedures utilized in different production areas.

(d) PROMOTION.—The plan may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the promotion of pecans and for the disbursement of necessary funds for such purposes, except that—

(1) any such program or project shall be directed toward increasing the general demand for pecans; and

(2) such promotional activities shall comply with other restrictions on the use of funds that are established under this title.

(e) RESEARCH AND INFORMATION.—The plan may provide for establishing and carrying on research, consumer information, and industry information projects and studies to the end that the marketing and utilization of pecans may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(f) RESERVE FUNDS.—The plan may provide authority to accumulate reserve funds from assessments collected pursuant to this title, to permit an effective and continuous coordinated program of research, consumer information, industry information and promotion in years when the production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for the operation of the plan for 2 years.

(g) FOREIGN MARKETS.—The plan may provide authority to use funds collected under this title, with the approval of the Secretary, for the development and expansion of pecan sales in foreign markets.

SEC. 108. ASSESSMENTS.

(a) IN GENERAL.—During the effective period of a plan issued pursuant to this title, assessments shall be—

(1) levied on all pecans produced in, and all pecans imported into, the United States and marketed; and

(2) deducted from the payment made to a grower for all pecans sold to a first handler.

(b) LIMITATION ON ASSESSMENTS.—No more than one assessment may be assessed under subsection (a) on a grower (as remitted by a first handler) or importer, for any lot of pecans handled or imported.

(c) REMITTING ASSESSMENTS.—

(1) IN GENERAL.—Assessments required under subsection (a) shall be remitted to the Board by—

(A) a first handler; and

(B) an importer.

(2) TIMES TO REMIT ASSESSMENT.—

(A) FIRST HANDLERS.—Each first handler who is not a grower-sheller and who is required to remit an assessment under paragraph (1) shall remit such assessment to the Board no later than the last day of the month following the month that the pecans being assessed were purchased or marketed by such first handler.

(B) GROWER-SHELLERS.—Each first handler who is a grower-sheller and who is required to remit an assessment under paragraph (1) shall remit such assessment to the Board, to the extent practicable, in payments of one-

third of the total annual amount of such assessment due to the Board on January 31, March 31, and May 10, or such dates as may be recommended by the Board and approved by the Secretary, during the fiscal year that the pecans being assessed were harvested.

(C) IMPORTERS.—Importers of pecans into the United States shall pay the assessment at the time the pecans enter the United States and shall remit such assessment to the Board.

(d) ASSESSMENT RATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), assessment rates shall be recommended by the Board and approved by the Secretary, except that the maximum assessment shall not exceed—

(A) during the period commencing on the effective date of the issuance of the plan and ending on the date the referendum is conducted under section 112(a), one-half cent per pound for in-shell pecans as determined by the Board and approved by the Secretary; and

(B) after such period, 2 cents per pound for in-shell pecans.

(2) ADJUSTING RATE FOR OUT-OF-SHELL PECANS.—The rate of assessment of shelled pecans shall be twice the rate established for in-shell pecans pursuant to paragraph (1).

(3) SPECIAL STATE ASSESSMENT.—Notwithstanding any other provision of this title, with the approval of the Secretary and if authorized by State law and requested by such State, a special assessment of one-quarter cent per pound for in-shell pecans, and an appropriate per-pound assessment for out-of-shell pecans as adjusted under paragraph (2), shall be remitted to the Board for the purpose of utilizing such funds by a State pecan marketing board for research projects to promote pecans pursuant to State law. The Board shall collect such assessments and upon receipt of such assessments shall remit such assessments to the State, within a time period mutually agreed upon between the State and the Board, and approved by the Secretary. In the collection of such State assessments, neither the Board nor the Secretary shall in any manner enforce the collection or remittance of any such payment by producers of such State assessments or investigate nonpayment of such State assessments, except to provide to a State the names of growers from whom such assessments were collected and the respective amounts of assessments collected. The Secretary is authorized to make such regulations as may be necessary to carry out the provisions of this section.

(e) LATE-PAYMENT CHARGE.—

(1) IN GENERAL.—There shall be a late-payment charge imposed on any person who fails to remit, on or before the due date established by the Board under subsection (c)(2), to the Board the total amount for which such person is liable.

(2) AMOUNT OF CHARGE.—The amount of the late-payment charge imposed under paragraph (1) shall be prescribed by the Board with the approval of the Secretary.

(f) REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT.—

(1) ESTABLISHMENT OF ESCROW ACCOUNT.—During the period beginning on the effective date of a plan first issued under section 104 after enactment of this title and ending on the date the referendum is conducted under section 112(a), the Board shall—

(A) establish an escrow account to be used for assessment refunds; and

(B) place funds in such account in accordance with paragraph (2).

(2) PLACEMENT OF FUNDS IN ACCOUNT.—The Board shall place in such account, from assessments collected during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(3) RIGHT TO RECEIVE REFUND.—Subject to paragraphs (4), (5), and (6), any grower, grower-sheller, or importer shall have the right to demand and receive from the Board a one-time refund of assessments paid by or on behalf of such grower, grower-sheller, or importer during the period referred to in paragraph (1) if—

(A) such grower, grower-sheller, or importer is required to pay such assessments;

(B) such grower, grower-sheller, or importer does not support the program established under this title;

(C) such grower, grower-sheller, or importer demands such refund prior to the conduct of the referendum under section 112(a); and

(D) the plan is not approved pursuant to the referendum conducted under section 112(a).

(4) FORM OF DEMAND.—Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board.

(5) MAKING OF REFUND.—Such refund shall be made on submission of proof satisfactory to the Board that such grower, grower-sheller, or importer paid the assessment for which refund is demanded.

(6) PRORATION.—If—

(A) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by eligible growers, grower-shellers, or importers; and

(B) the plan is not approved pursuant to the referendum conducted under section 112(a)

the Board shall prorate the amount of such refunds among all eligible growers, grower-shellers, and importers who demand such refund.

(7) PROGRAM APPROVED.—If the plan is approved pursuant to the referendum conducted under section 112(a), all funds in the escrow account shall be returned to the Board for use by the Board in accordance with this title.

SEC. 109. PETITION AND REVIEW.

(a) PETITION.—

(1) IN GENERAL.—A person subject to a plan issued under this title may file with the Secretary a petition—

(A) stating that the plan, any provision of the plan, or any obligation imposed in connection with the plan is not in accordance with law; and

(B) requesting a modification of the plan or an exemption from the plan.

(2) HEARINGS.—The petitioner shall be given the opportunity for a hearing on the petition, on the record and in accordance with regulations issued by the Secretary.

(3) RULING.—After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) REVIEW.—

(1) COMMENCEMENT OF ACTION.—The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

(2) PROCESS.—Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS.—If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further proceedings as, in the opinion of the court, the law requires.

(4) ENFORCEMENT.—The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 110.

SEC. 110. ENFORCEMENT.

(a) JURISDICTION.—The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, this title or any plan, order, rule, or regulation issued under this title.

(b) REFERRAL TO ATTORNEY GENERAL.—A civil action to be brought under this section, other than under subsection (f), shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this title or any plan, order, rule, or regulation issued under this title if the Secretary believes that the administration and enforcement of this title would be adequately served by administrative action under subsection (c) or by providing a suitable written notice or warning to any person committing the violation.

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—

(A) A person who willfully violates any provision of this title or any plan, order, rule, or regulation issued under this title, including the failure to pay, collect, or remit any assessment or late-payment charge required of the person under this title or any plan, order, rule, or regulation issued under this title, may be assessed by the Secretary a civil penalty of not less than $1,000 nor more than $10,000 for each such violation.

(B) Each violation shall be a separate offense.

(2) CEASE AND DESIST ORDERS.—In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) NOTICE AND HEARING.—No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation.

(4) FINALITY.—The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person against whom the order is issued files an appeal from the Secretary's order in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.—A person against whom a civil penalty is assessed or a cease and desist order is issued under subsection (c) may obtain review of such penalty or order in the district court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia, by—

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in such court; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

(2) RECORD.—The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.—A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.—Any person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing on the record and for judicial review under the procedures specified in subsections (c) and (d), of not more than $1,000 for each offense. Each day during which the failure continues shall be considered a separate violation of such order.

(f) FAILURE TO PAY PENALTY.—If a person fails to pay a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate district court has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of such order imposing such civil penalty shall not be subject to review.

SEC. 111. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) IN GENERAL.—The Secretary may make such investigations as the Secretary deems necessary—

(1) for the effective administration of this title; or

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this title, or of any plan, rule, or regulation issued under this title.

(b) POWER TO SUBPOENA.—

(1) INVESTIGATIONS.—For the purpose of an investigation made under subsection (a), the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) ADMINISTRATIVE HEARINGS.—For the purpose of anadministrative hearing held under section 109 or section 110, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under this section shall be within the judicial district where such person resides or has a principal place of business.

SEC. 112. REQUIREMENT OF REFERENDUM.

(a) IN GENERAL.—Not later than 24 months after the effective date of the plan first issued under section 104 after enactment of this title, the Secretary shall conduct a referendum among growers, grower-shellers, and importers, who during a representative period determined by the Secretary have been engaged in the production or importation of pecans, for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the plan.

(b) OTHER REFERENDA.—

(1) IN GENERAL.—After the referendum required under subsection (a), the Secretary shall hold a referendum on request of the Board or 10 percent or more of the total number of growers, grower-shellers, and importers, to determine if growers, grower-shellers, and importers favor the termination or suspension of the plan.

(2) SUSPENSION OR TERMINATION.—The Secretary shall terminate or suspend such plan, in accordance with section 113(b), whenever the Secretary determines that such suspension or termination is favored by a majority of those voting in a referendum.

(c) COSTS OF REFERENDUM.—The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this title, except for the salaries of Government employees.

(d) MANNER.—

(1) IN GENERAL.—Referenda conducted pursuant to this title shall be conducted in such a manner as is determined by the Secretary.

(2) ADVANCE REGISTRATION.—A grower, grower-sheller, or importer who chooses to vote in any referendum conducted under this title shall register in person prior to the voting period at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary, for such grower, grower-sheller, or importer.

(3) VOTING.—A grower, grower-sheller, or importer who votes in any referendum conducted under this title shall vote in person at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary.

(4) NOTICE.—Each Agricultural Stabilization and Conservation Service office shall notify all growers, grower-shellers, and importers in the area of such office, as determined by the Secretary, at least 30 days prior to a referendum conducted under this title. Such notice shall explain the registration and voting procedures established under this subsection.

SEC. 113. SUSPENSION OR TERMINATION OF PLAN.

(a) MANDATORY SUSPENSION OR TERMINATION.—The Secretary shall, whenever the Secretary finds that the plan or any provision of the plan obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such plan or provision.

(b) SUSPENSION OR TERMINATION.—If, as a result of any referendum conducted under this title, the Secretary determines that suspension or termination of a plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum, the Secretary shall—

(1) within 6 months after making such determination, suspend or terminate, as the case may be, collection of assessments under the plan; and

(2) suspend or terminate, as the case may be, activities under the plan in an orderly manner as soon as practicable.

(c) The termination or suspension of any plan, or any provision thereof, shall not be considered a plan within the meaning of this title.

SEC. 114. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this title.

(b) ADMINISTRATIVE EXPENSES.—Funds appropriated to carry out this title shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any plan issued under this title.

TITLE II—MUSHROOMS

SEC. 201. SHORT TITLE.

This title may be cited as the "Mushroom Promotion, Research, and Consumer Information Act of 1990".

SEC. 202. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress finds that—

(1) mushrooms are an important food that is a valuable part of the human diet;

(2) the production of mushrooms plays a significant role in the Nation's economy in that mushrooms are produced by hundreds of mushroom producers, distributed through thousands of wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) mushroom production benefits the environment by efficiently using agricultural byproducts;

(4) mushrooms must be high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of this important product are available to the people of the United States;

(5) the maintenance and expansion of existing markets and uses, and the development of new markets and uses, for mushrooms are vital to the welfare of producers and those concerned with marketing and using mushrooms, as well as to the agricultural economy of the Nation;

(6) the cooperative development, financing, and implementation of a coordinated program of mushroom promotion, research, and consumer information are necessary to maintain and expand existing markets for mushrooms; and

(7) mushrooms move in interstate and foreign commerce, and mushrooms that do not move in such channels of commerce directly burden or affect interstate commerce in mushrooms.

(b) POLICY.—It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this title, of an orderly procedure for developing, financing through adequate assessments on mushrooms produced domestically or imported into the United States, and carrying out, an effective, continuous, and coordinated program of promotion, research, and consumer and industry information designed to—

(1) strengthen the mushroom industry's position in the marketplace;

(2) maintain and expand existing markets and uses for mushrooms; and

(3) develop new markets and uses for mushrooms.

(c) CONSTRUCTION.—Nothing in this title may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms.

SEC. 203. DEFINITIONS

As used in this title—

(1) COMMERCE.—The term "commerce" means interstate, foreign, or intrastate commerce.

(2) CONSUMER INFORMATION.—The term "consumer information" means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

(3) COUNCIL.—The term "Council" means the Mushroom council established under section 205(b).

(4) DEPARTMENT.—The term "Department" means the Department of Agriculture.

(5) FIRST HANDLER.—The term "first handler" means any person, as described in an order issued under this title, who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

(6) IMPORTER.—The term "importer" means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

(7) INDUSTRY INFORMATION.—The term "industry information" means information and programs that are designed to lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

(8) MARKETING.—The term "marketing" means the sale or other disposition of mushrooms in any channel of commerce.

(9) MUSHROOMS.—The term "mushrooms" means all varieties of cultivated mushrooms grown within the United States for the fresh market, or imported into the United States for the fresh market, that are marketed, except that such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed, as may be determined by the Secretary.

(10) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(11) PRODUCER.—The term "producer" means any person engaged in the production of mushrooms who owns or who shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

(12) PROMOTION.—The term "promotion" means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

(13) RESEARCH.—The term "research" means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of mushrooms.

(14) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(15) STATE AND UNITED STATES.—The terms "State" and "United States" include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 204. ISSUANCE OF ORDERS.

(a) GENERAL.—To effectuate the declared policy of section 202(b), the Secretary, subject to the procedures provided in subsection (b), shall issue orders under this title applicable to producers, importers, and first handlers of mushrooms. Any such order shall be national in scope. Not more than one order shall be in effect under this title at any one time.

(b) PROCEDURES.—

(1) ISSUANCE OF AN ORDER.—The Secretary may propose the issuance of an order under this title, or an association of mushroom producers or any other person that will be affected by this title may request the issuance of, and submit a proposal for, such an order.

(2) PUBLICATION OF ORDER.—Not later than 60 days after the receipt of a request and proposal by an interested person for an order, or when the Secretary determines to propose an order, the Secretary shall publish the proposed order and give due notice and opportunity for public comment on the proposed order.

(3) ISSUANCE OF ORDER.—After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of this title. Such order shall be issued and, if approved by producers and importers of mushrooms as provided in section 206(a), shall become effective not later than 180 days following publication of the proposed order.

(c) AMENDMENTS.—

(1) IN GENERAL.—The Secretary, from time to time, may amend any order issued under this section.

(2) APPLICATION OF TITLE.—The provisions of this title applicable to an order shall be applicable to amendments to the order.

SEC. 205. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.—Each order issued under this title shall contain the terms and conditions prescribed in this section.

(b) MUSHROOM COUNCIL.—

(1) ESTABLISHMENT AND MEMBERSHIP OF COUNCIL.—

(A) ESTABLISHMENT.—The order shall provide for the establishment of, and selection of members to, a Mushroom Council that shall consist of at least 4 members and not more than 9 members.

(B) MEMBERSHIP.—Except as provided for in paragraph (2), the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in

the manner authorized by the Secretary, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

(2) APPOINTMENTS.—

(A) IN GENERAL.—In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

(B) UNITS.—In establishing such geographical distributionof mushroom production, a whole State shall be considered as a unit and such units shall be organized into 4 regions that shall fairly represent the geographic distribution of mushroom production within the United States.

(C) IMPORTERS.—Importers shall be represented as one region, which shall be separate from the regions established for mushrooms produced in the United States.

(D) MEMBERS PER REGION.—The Secretary shall appoint one member from each region if such region produces or imports, on average, at least 35,000,000 pounds of mushrooms annually.

(E) ADDITIONAL MEMBERS.—Subject to the nine-member limit on the number of members on the Council provided in paragraph (1), the Secretary shall appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region.

(F) For purposes of this paragraph, in determining average annual mushroom production in each of the 4 regions of the United States established under this paragraph, the Secretary shall only consider mushrooms produced by producers covered by this title, as defined in section 203(11).

(G) FAILURE TO NOMINATE.—If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order.

(3) TERMS; COMPENSATION.—

(A) TERMS.—The term of appointment to the Council shall be for 3 years, except that the initial appointments shall to the extent practicable be proportionately for 1-year, 2-year, and 3-year terms.

(B) COMPENSATION.—Council members shall serve without compensation but shall be reimbursed for their expenses incurred in performing their duties as members of the Council.

(c) POWERS AND DUTIES OF THE COUNCIL.—The order shall define the powers and duties of the Council, which shall include the following powers and duties—

(1) to administer the order in accordance with its terms and provisions;

(2) to make rules and regulations to effectuate the terms and provisions of the order;

(3) to appoint members of the Council to serve on an executive committee;

(4) to propose, receive, evaluate, approve and submit to the Secretary for approval under subsection (d) budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, as well as to contract and enter into agreements with appropriate persons to implement such plans or projects;

(5) to develop and propose to the Secretary voluntary quality and grade standards for mushrooms;

(6) to receive, investigate, and report to the Secretary complaints of violations of the order;

(7) to recommend to the Secretary amendments to the order; and

(8) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this title only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States, except that income from any such invested funds may only be used for any purpose for which the invested funds may be used.

(d) PLANS AND BUDGETS.—

(1) SUBMISSION TO SECRETARY.—The order shall provide that the Council shall submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

(2) BUDGETS.—The order shall require the Council to submit to the Secretary for approval budgets on a fiscal year basis of its anticipated expenses and disbursements in the implementation of the order, including projected costs of promotion, research, consumer information, and industry information plans and projects.

(3) APPROVAL BY SECRETARY.—No plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary.

(e) CONTRACTS AND AGREEMENTS.—

(1) IN GENERAL.—To ensure efficient use of funds, the order shall provide that the Council may enter into contracts or agreements for the implementation and carrying out of plans or projects of mushroom promotion, research, consumer information, or industry information, including contracts with producer organizations, and for the payment of the cost thereof with funds received by the Council under the order.

(2) REQUIREMENTS.—Any such contract or agreement shall provide that—

(A) the contracting party shall develop and submit to the Council a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project;

(B) the plan or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Council of activities conducted, and make such other reports as the Council or the Secretary may require.

(3) PRODUCER ORGANIZATIONS.—The order shall provide that the Council may contract with producer organizations for any other services. Any such contract shall include provisions comparable to those provided in subparagraphs (A), (B), and (C) of paragraph (2).

(f) BOOKS AND RECORDS OF COUNCIL.—

(1) IN GENERAL.—The order shall require the Council to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Council.

(2) AUDITS.—The Council shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) ASSESSMENTS.—

(1) COLLECTION AND PAYMENT.—

(A) IN GENERAL.—The order shall provide that each first handler of mushrooms for the domestic fresh market produced in the United States shall collect, in the manner prescribed by the order, assessments from producers and remit the assessments to the Council.

(B) IMPORTERS.—The order also shall provide that each importer of mushrooms for the domestic fresh market shall pay assessments to the Council in the manner prescribed by the order.

(C) DIRECT MARKETING.—Any person marketing mushrooms of that person's own production directly to consumers shall remit the assessments on such mushrooms directly to the Council in the manner prescribed in the order.

(2) RATE OF ASSESSMENT.—The rate of assessment shall be determined and announced by the Council and may be changed by the Council at any time. The order shall provide that the rate of assessment—

(A) for the first year of the order, may not exceed one-quarter cent per pound of mushrooms;

(B) for the second year of the order, may not exceed one-third cent per pound of mushrooms;

(C) for the third year of the order, may not exceed one-half cent per pound of mushrooms; and

(D) for the following years of the order, may not exceed one cent per pound of mushrooms.

(3) USE OF ASSESSMENTS.—The order shall provide that the assessments shall be used for payment of the expenses in implementing and administering this title, with provision for a reasonable reserve, and to cover those administrative

costs incurred by the Secretary in implementing and administering this title, except for the salaries of Government employees incurred in conducting referenda.

(4) LIMITATION ON COLLECTION.—No assessment may be collected on mushrooms that a first handler certifies will be exported as mushrooms.

(h) PROHIBITION.—The order shall prohibit any funds received by the Council under the order from being used in any manner for the purpose of influencing legislation or government action or policy, except that such funds may be used by the Council for the development and recommendation to the Secretary of amendments to the order as prescribed in this title and for the submission to the Secretary of recommended voluntary grade and quality standards for mushrooms under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(i) BOOKS AND RECORDS.—

(1) IN GENERAL.—The order shall require that each first handler and importer of mushrooms maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) AVAILABILITY TO SECRETARY.—Such information shall be made available to the Secretary as is appropriate for the administration or enforcement of this title, the order, or any regulation issued under this title.

(3) CONFIDENTIALITY.—

(A) IN GENERAL.—All information obtained under paragraph (1) shall be kept confidential by all officers and employees of the Department and the Council, and agents of the Council, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) LIMITATIONS.—Nothing in this paragraph may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by such person.

(4) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Except as provided in section 208, information obtained under this title may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(B) PENALTY.—Any person knowingly violating this subsection, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if an officer or employee of the Council or the Department, shall be removed from office.

(5) WITHHOLDING INFORMATION.—Nothing in this title shall be construed to authorize the withholding of information from Congress.

(j) OTHER TERMS AND CONDITIONS.—The order also shall contain such terms and conditions, not inconsistent with this title, as are necessary to effectuate this title, including provisions for the assessment of a penalty for each late payment of assessments under subsection (g).

SEC. 206. REFERENDA.

(a) INITIAL REFERENDUM.—

(1) IN GENERAL.—Within the 60-day period immediately preceding the effective date of an order issued under section 204(b), the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether the order shall go into effect.

(2) APPROVAL OF ORDER.—The order shall become effective, as provided in section 204(b), if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

(b) SUCCEEDING REFERENDA.—

(1) DETERMINATION CONCERNING ORDER.—

(A) IN GENERAL.—Effective 5 years after the date on which an order becomes effective under section 204(b), the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the order.

(B) REQUEST FOR REFERENDUM.—Effective beginning 3 years after the date on which an order becomes effective under section 204(b), the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to ascertain whether producers and importers favor termination or suspension of the order.

(2) SUSPENSION OR TERMINATION.—If, as a result of any referendum conducted under paragraph (1), the Secretary determines that suspension or termination of an order is favored by a majority of the producers and importers voting in thereferendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall—

(A) within 6 months after making such determination, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(c) MANNER.—Referenda conducted pursuant to this section shall be conducted in such a manner as is determined by the Secretary.

SEC. 207. PETITION AND REVIEW.

(a) PETITION.—

(1) IN GENERAL.—A person subject to an order issued under this title may file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) HEARINGS.—The petitioner shall be given the opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) RULING.—After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) REVIEW.—

(1) COMMENCEMENT OF ACTION.—The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling of the Secretary under subsection (a).

(2) PROCESS.—Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS.—If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

(4) ENFORCEMENT.—The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 208.

SEC. 208. ENFORCEMENT.

(a) JURISDICTION.—The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this title.

(b) REFERRAL TO ATTORNEY GENERAL.—A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this title, or any order, rule, or regulation issued under this title, if the Secretary believes that the administration and enforcement of this title would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person who committed or is committing the violation.

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—A person who willfully violates a provision of any order or regulation issued by the Secretary under this title, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under such order or regulation, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense.

(2) CEASE-AND-DESIST ORDERS.—In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) NOTICE AND HEARING.—No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) FINALITY.—The penalty assessed or cease and desist order issued under this subsection shall be final and conclusive unless the person against whom the penalty is assessed or the order is issued files an appeal with the appropriate district court of the United States in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.—Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (c) may obtain review of the penalty or order by—

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in the district court of the United States for the district in which such person resides or does business, or in the United States district court for the District of Columbia; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

(2) RECORD.—The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.—A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.—A person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $500 for each offense. Each day during which such failure continues shall be considered as a separate violation of such order.

(f) FAILURE TO PAY PENALTIES.—If a person fails to pay an assessment of a civil penalty after it has become final and unappealable, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any district court in which the person resides or conducts business. In such action, the validity and appropriateness of such civil penalty shall not be subject to review.

SEC. 209. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) INVESTIGATIONS.—The Secretary may make such investigations as the Secretary considers necessary for the effective administration of this title or to determine whether any person subject to this title has engaged or is engaging in any act that constitutes a violation of this title or of any order, rule, or regulation issued under this title.

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

(1) For the purpose of an investigation made under subsection (a), the Secretary may administer oaths and affirmations and issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 207 or section 208, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invokethe aid of any court of the United States within the jurisdictionof which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under this section shall be within the judicial district where such person resides or has a principal place of business.

SEC. 210. SAVINGS PROVISION.

Nothing in this title may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

SEC. 211. SUSPENSION OR TERMINATION OF ORDERS.

The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or provision. The termination or suspension of any order, or any provision thereof, shall not be considered an order under the meaning of this title.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this title.

(b) ADMINISTRATIVE EXPENSES.—The funds so appropriated shall not be available for payment of the expenses or expenditures of the Council in administering any provision of an order issued under this title.

SEC. 213. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this title.

TITLE III—POTATOES

SEC. 301. SHORT TITLE.

This title may be cited as the "Potato Research and Promotion Act Amendments of 1990".

SEC. 302. FINDINGS AND DECLARATION OF POLICY.

Section 302 of the Potato Research and Promotion Act (7U.S.C. 2611) is amended—

(1) in the first paragraph—

(A) in the first sentence by inserting "and foreign countries" after "United States";

(B) in the second sentence, by inserting "and imported into the United States from foreign countries" after "United States"; and

(C) by striking the last sentence;

(2) in the second paragraph—

(A) in the first sentence—

(i) by striking ", in a large part,"; and

(ii) by inserting "or foreign" after "channels of interstate"; and

(B) by striking the second sentence; and

(3) in the fourth paragraph—

(A) by inserting "and imported into the United States from foreign countries" after "commercial use"; and

(B) by striking at the end thereof "produced in the United States" and inserting "and potato products".

SEC. 303. DEFINITIONS.

Section 303 of the Potato Research and Promotion Act (7U.S.C. 2612) is amended—

(1) in subsection (c)—

(A) by striking "forty-eight contiguous" and inserting "50"; and

(B) by inserting before the period at the end thereof ", and grown in foreign countries and imported into the United States"; and

(2) by adding at the end the following new subsection:

"(g) The term 'importer' means any person who imports tablestock, frozen, or processed potatoes for ultimate consumption by humans or seed potatoes into the United States.".

SEC. 304. AUTHORITY TO ISSUE A PLAN.

Section 304 of the Potato Research and Promotion Act (7 U.S.C. 2613) is amended—

(1) in the first sentence—

(A) by striking "persons engaged in the handling of potatoes (hereinafter referred to as handlers)" and inserting "handlers and importers", and

(B) by inserting "or imported" after "potatoes handled"; and

(2) in the third sentence—

(A) by striking "forty-eight contiguous" and inserting "50", and

(B) by inserting before the period "and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States".

SEC. 305. NOTICE AND HEARINGS.

Section 305 of the Potato Research and Promotion Act (7U.S.C. 2614) is amended—

(1) in the first sentence by striking "potato producers" and inserting "interested persons"; and

(2) in the second sentence by striking "by potato producers or by any other interested person or persons, including the Secretary" and inserting "by any interested person, including the Secretary".

SEC. 306. REQUIRED TERMS IN PLANS.

Section 308 of the Potato Research and Promotion Act (7 U.S.C. 2617) is amended—

(1) in subsection (b)—

(A) by inserting after the first sentence the following: "If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.",

(B) after "If producers" by inserting "or importers", and

(C) in the last sentence by inserting ", or to importer approval when importers are subject to a plan," after "approval";

(2) in subsection (e)—

(A) by striking "one cent" and inserting "2 cents", and

(B) by inserting ", and importers when importers are subject to a plan," after "producers";

(3) in subsection (f)(1) by inserting in the proviso ", or importer approval when importers are subject to a plan," after "producer approval"; and

(4) by striking subsection (g) and redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively.

SEC. 307. PERMISSIVE TERMS IN PLANS.

Section 309 of the Potato Research and Promotion Act (7 U.S.C. 2618) is amended by redesignating subsection (g) as subsection (i) and inserting the following new subsections:

"(g) Providing that any potato producer or importer against whose potatoes any assessment is made and collected under authority of this title and who is not in favor of supporting the research and promotion program as provided for under this title shall have the right to demand and receive from the board a refund of such assessment. Such demand shall be made personally by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than 90 days, and upon submission of proof satisfactory to the board that the producer or importer paid the assessment for which refund is sought, and any such refund shall be made within 60 days after demand therefor.

"(h) Providing for authority to assess imports of tablestock, frozen, or processed potatoes for ultimate consumption by humans and seed potatoes into the United States.".

SEC. 308. ASSESSMENTS.

Section 310 of the Potato Research and Promotion Act (7U.S.C. 2619) is amended—

(1) in subsection (a) by inserting "(1)" after "(a)" and adding at the end thereof the following new paragraph:

"(2) when importers are subject to a plan, each importer designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes. The assessment on imported tablestock, frozen, or processed potatoes for ultimate consumption by humans, and seed potatoes shall be established by the board so that the effective assessment shall equal that on domestic production and shall be paid by the importer to the board at the time of entry into the United States. Each such importer shall maintain a separate record including the total quantity of table stock, frozen, processed potatoes for ultimate consumption by humans, and seed potatoes imported into the United States that are included under the terms of the plan as well as those that are exempt under such plan, and shall indicate such other information as may be prescribed by the board. No more than one assessment shall be made on any imported potatoes.";

(2) in subsection (b) by inserting "and importers" after "Handlers"; and

(3) in subsection (c)(1) by inserting "or importers" after "handlers".

SEC. 309. INVESTIGATION AND POWER TO SUBPOENA.

Section 313 of the Potato Research and Promotion Act (7U.S.C. 2622) is amended in subsection (a)—

(1) by striking in the first sentence "a handler or any other" and inserting "any"; and

(2) in the last sentence by striking "handler or other".

SEC. 310. REQUIREMENT OF REFERENDUM.

Section 314 of the Potato Research and Promotion Act (7 U.S.C. 2623) is amended—

(1) in subsection (a) by adding at the end the following sentence: "When the issuance of a plan would subject importers to the terms and conditions of a plan, the Secretary also shall conduct the referendum among importers, who during a representative period determined by the Secretary have been engaged in the importation of potatoes, for the purpose of ascertaining whether the issuance of such plan is approved or favored by such importers.";

(2) in subsection (b) by striking "two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the potatoes produced during the representative period by producers voting in such referendum, and by not less than a majority of the producers voting in such referendum" and inserting "a majority of the producers voting in such referendum or a majority of the producers and importers when the issuance of a plan would subject importers to the terms and conditions of a plan, voting in such referendum";

(3) in subsection (c) by inserting "and importers" after "producers"; and

(4) in subsection (d) by inserting ", or any importer or the volume of potatoes imported by such importer," after "potatoes".

SEC. 311. SUSPENSION OR TERMINATION OF PLANS.

Section 315 of the Potato Research and Promotion Act (7 U.S.C. 2624) is amended—

(1) in subsection (b)—

(A) by inserting ", or of the total number of producers and importers when importers are subject to a plan," after "potato producers" the first time it appears;

(B) by inserting "and importers" after "potato producers" the second time it appears;

(C) by inserting "and import" after "produce"; and

(D) by striking "by the potato producers voting in the referendum" and inserting "and imported by those voting in the referendum"; and

(2) by adding a new subsection (c) to read as follows:

"(c) The termination or suspension of any plan, or any provision thereof, shall not be considered the issuance of a plan within the meaning of this title.".

SEC. 312. AMENDMENT PROCEDURE.

(a) IN GENERAL.—Notwithstanding any provision of the Potato Research and Promotion Act (hereafter in this section referred toas the "Act"), the procedure speci-

fied in this section shall apply if a producer or a producer organization requests the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") to amend the plan in effect under that Act (hereafter in this section referred to as the "plan") to—

(1) subject importers to the terms and conditions of a plan, and

(2) eliminate provisions for refunds of assessments for those not in favor of supporting the research and promotion program as provided under that Act.

The procedure under this section shall apply only in the case of the first such request received after the date of enactment of this Act.

(b) PUBLICATION OF PROPOSED AMENDMENTS.—The Secretary shall publish for public comment such proposed amendments to the plan within 60 days.

(c) ISSUANCE OF FINAL AMENDMENTS.—Not later than 150 days after publication of such amendment, and after notice and opportunity for public comment, the Secretary shall issue theamendments to the plan, as described in subsection (a), if the Secretary has reason to believe that such amendments will tend to effectuate the declared policy of this title.

(d) REFERENDUM.—Not later than 24 months after the date of issuance of such amendments to the plan, the Secretary shall conduct a referendum among producers and importers who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes. The amendments shall be continued only if the Secretary determines that the amendments to the plan have been approved by a majority of the total number of producers and importers voting in the referendum.

(e) REFUNDS.—The board shall—

(1) establish an escrow account to be used for assessment refunds, and place funds in such account in accordance with paragraph (2) during the period beginning on the effective date of the amendments to the plan issued under subsection (c) and ending on the date of the referendum on the amendments to the plan;

(2) place in the account established under paragraph (1), from assessments collected under the plan during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent;

(3) subject to paragraphs (4), (5), and (6), provide that for the period referred to in paragraph (1) any producer or importer shall have the right to demand and receive from the board a one-time refund of assessments collected from such producer or importer during such period if—

(A) such producer or importer is responsible for paying such assessments;

(B) such producer or importer does not support the program established under the plan; and

(C) the amendments to the plan to eliminate provisions for refunds of assessments are not approved pursuant to a referendum conducted under subsection (d);

(4) require such demand to be made in accordance with regulations, on a form, and within a time period prescribed by the board;

(5) require such refund to be made on submission of proof satisfactory to the board that such producer or importer paid the assessment for which refund is demanded; and

(6) if the amount in the escrow account required to be established by paragraph (1) is not sufficient to refund the total amount of assessments demanded by all eligible producers and importers under this subsection, prorate the amount of such refunds among all eligible producers and importers who demand such refund.

(f) If such amendments to the plan are not approved, the Secretary shall terminate the amendments and the plan shall continue in effect without the amendments.

(g) AMENDMENT TO INCLUDE THE 50 STATES.—Notwithstanding any provision of the Act, the Secretary shall, upon request of a producer or a producer organization, issue an amendment to the plan to include the 50 States of the United States. Such amendment shall not be subject to a referendum.

TITLE IV—LIMES

SEC. 401. SHORT TITLE.

This title may be cited as the "Lime Research, Promotion, and Consumer Information Act of 1990".

SEC. 402. FINDINGS, PURPOSES, AND LIMITATIONS.

(a) FINDINGS.—Congress finds that—

(1) domestically produced limes are grown by many individual producers;

(2) virtually all domestically produced limes are grown in the States of Florida and California;

(3) limes move in interstate and foreign commerce, and limes that do not move in such channels of commerce directly burden or affect interstate commerce in limes;

(4) in recent years, large quantities of limes have been imported into the United States;

(5) the maintenance and expansion of existing domestic and foreign markets for limes and the development of additional and improved markets for limes are vital to the welfare of lime producers and other persons concerned with producing, marketing, or processing limes;

(6) a coordinated program of research, promotion, and consumer information regarding limes is necessary for the maintenance and development of such markets; and

(7) lime producers, lime producer-handlers, lime handlers, and lime importers are unable to implement and finance such a program without cooperative action.

(b) PURPOSES.—The purposes of this title are—

(1) to authorize the establishment of an orderly procedure for the development and financing (through an adequate assessment) of an effective and coordinated program of research, promotion, and consumer information regarding limes designed—

(A) to strengthen the position of the lime industry in domestic and foreign markets, and

(B) to maintain, develop, and expand markets for limes; and

(2) to treat domestically produced and imported limes equitably.

(c) LIMITATION.—Nothing in this title shall be construed to require quality standards for limes, control the production of limes, or otherwise limit the right of the individual producers to produce limes.

SEC. 403. DEFINITIONS.

For purposes of this title:

(1) BOARD.—The term "Board" means the Lime Board provided for under section 405(b).

(2) CONSUMER INFORMATION.—The term "consumer information" means any action taken to provide information to, and broaden the understanding of, the general public regarding the use, nutritional attributes, and care of limes.

(3) HANDLE.—The term "handle" means to sell, purchase, or package limes.

(4) HANDLER.—The term "handler" means any person in the business of handling limes.

(5) IMPORTER.—The term "importer" means any person who imports limes into the United States.

(6) LIME.—The term "lime" means the fruit of a citrus aurantifolia tree for the fresh market.

(7) MARKETING.—The term "marketing" means the sale or other disposition of limes in commerce.

(8) ORDER.—The term "order" means a lime research, promotion, and consumer information order issued by the Secretary under section 404(a).

(9) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

(10) PRODUCER.—The term "producer" means any person who produces limes in the United States for sale in commerce.

(11) PRODUCER-HANDLER.—The term "producer-handler" means any person who is both a producer and handler of limes.

(12) PROMOTION.—The term "promotion" means any action taken under this title (including paid advertising) to present a favorable image for limes to the general public with the express intent of improving the competitive position and stimulating the sale of limes.

(13) RESEARCH.—The term "research" means any type of research relating to the use and nutritional value of limes and designed to advance the image, desirability, marketability, or quality of limes.

(14) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(15) STATE AND UNITED STATES.—The terms "State" and "United States" include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 404. ISSUANCE OF ORDERS.

(a) IN GENERAL.—Subject to this title, and to effectuate the declared purposes of this title, the Secretary shall issue and, from time to time, amend lime research, promotion, and consumer information orders applicable to handlers, producers, producer-handlers, and importers of limes. Any such order shall be national in scope. Not more than one order shall be in effect under this title at any one time.

(b) PROCEDURE.—

(1) PROPOSAL FOR ISSUANCE OF ORDER.—Any person that will be affected by this title may request the issuance of, and submit a proposal for, an order under this title.

(2) PROPOSED ORDER.—Not later than 60 days after the receipt of a request and proposal by an interested person for an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) ISSUANCE OF ORDER.—After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of this title.

(4) EFFECTIVE DATE OF ORDER.—Such order shall be issued and become effective not later than 150 days following publication of the proposed order.

(c) AMENDMENTS.—The Secretary, from time to time, may amend any order issued under this section. The provisions of this title applicable to orders shall be applicable to amendments to orders.

SEC. 405. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.—An order issued by the Secretary under section 404(a) shall contain the terms and conditions described in this section and, except as provided in section 406, no other terms or conditions.

(b) LIME BOARD.—Such order shall provide for the establishment of a Lime Board as follows:

(1) MEMBERSHIP.—The Board shall be composed of—

(A) 7 members who are producers and who are not exempt from an assessment under subsection (d)(5)(A);

(B) 3 members who are importers and who are not exempt from an assessment under subsection (d)(5)(A); and

(C) one member appointed from the general public.

(2) APPOINTMENT AND NOMINATION.—

(A) APPOINTMENT.—The Secretary shall appoint the members of the Board.

(B) PRODUCERS.—The 7 members who are producers shall be appointed from individuals nominated by lime producers.

(C) IMPORTERS.—The 3 members who are importers shall be appointed from individuals nominated by lime importers.

(D) PUBLIC.—The public representative shall be appointed from nominations of the Board.

(E) FAILURE TO NOMINATE.—If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order. If the Board fails to nominate a public representative, such member may be appointed by the Secretary without a nomination.

(F) INITIAL BOARD.—The Secretary shall establish an initial Board from among nominations solicited by the Secretary. For the purpose of obtaining nominations for the members of the initial Board described in paragraph (1), the Secretary shall perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate.

(3) ALTERNATES.—The Secretary shall appoint an alternate for each member of the Board. An alternate shall—

(A) be appointed in the same manner as the member for whom such individual is an alternate; and

(B) serve on the Board if such member is absent from a meeting or is disqualified under paragraph (5).

(4) TERMS.—Members of the Board shall be appointed for a term of 3 years. Of the members first appointed—

(A) 3 members shall be appointed for a term of 1 year;

(B) 4 members shall be appointed for a term of 2 years; and

(C) 4 members shall be appointed for a term of 3 years;

as designated by the Secretary at the time of appointment.

(5) REPLACEMENT.—If a member or alternate of the Board who was appointed as a producer, importer, or public representative ceases to belong to the group for which such member was appointed, such member or alternate shall be disqualified from serving on the Board.

(6) COMPENSATION.—Members and alternates of the Board shall serve without pay.

(7) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of duties for the Board, members and alternates shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(8) POWERS AND DUTIES.—The Board shall—

(A) administer orders issued by the Secretary under section 404(a), and amendments to such orders, in accordance with their terms and provisions and consistent with this title;

(B) prescribe rules and regulations to effectuate the terms and provisions of such orders;

(C) receive, investigate, and report to the Secretary accounts of violations of such orders;

(D) make recommendations to the Secretary with respect to amendments that should be made to such orders; and

(E) employ a manager and staff.

(c) BUDGETS AND PLANS.—Such order shall provide for periodic budgets and plans as follows:

(1) BUDGETS.—The Board shall prepare and submit to the Secretary a budget (on a fiscal period basis determined by the Secretary) of the anticipated expenses and disbursements of the Board in the administration of the order, including probable costs of research, promotion, and consumer information. A budget shall take effect on the approval of the Secretary.

(2) PLANS.—Each budget shall include a plan for research, promotion, and consumer information regarding limes. A plan under this paragraph shall take effect on the approval of the Secretary. The Board may enter into contracts and agreements, with the approval of the Secretary, for—

(A) the development and carrying out of such plan; and

(B) the payment of the cost of such plan with funds collected pursuant to this title.

(d) ASSESSMENTS.—Such order shall provide for the imposition and collection of assessments with regard to the production and importation of limes as follows:

(1) RATE.—The assessment rate shall not exceed $.01 per pound of limes.

(2) COLLECTION BY FIRST HANDLERS.—Except as provided in paragraph (4), the first handler of limes shall—

(A) be responsible for the collection from the producer, and payment to the Board, of assessments under this subsection; and

(B) maintain a separate record of the limes of each producer whose limes are so handled, including the limes owned by the handler.

(3) PRODUCER-HANDLERS.—For purposes of paragraph (2), a producer-handler shall be considered the first handler of limes produced by such producer-handler.

(4) IMPORTERS.—The assessment on imported limes shall be paid by the importer at the time of entry into the United States and shall be remitted to the Board.

(5) DE MINIMIS EXCEPTION.—The following persons are exempt from an assessment under this subsection—

(A) a producer who produces less than 35,000 pounds of limes per year;

(B) a producer-handler who produces and handles less than 35,000 pounds of limes per year; and

(C) an importer who imports less than 35,000 pounds of limes per year.

(6) CLAIMING AN EXEMPTION.—To claim an exemption under paragraph (5) for a particular year, a person shall submit an application to the Board—

(A) stating the basis for such exemption; and

(B) certifying that such person will not exceed the limitation required for such exemption in such year.

(e) USE OF ASSESSMENTS.—

(1) IN GENERAL.—Such order shall provide that funds paid to the Board as assessments under subsection (d)—

(A) may be used by the Board to—

(i) pay for research, promotion, and consumer information described in the budget of the Board under subsection (c) and for other expenses incurred by the Board in the administration of an order;

(ii) pay such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary; and

(iii) fund a reserve established under section 406(4); and

(B) shall be used to pay the expenses incurred by the Secretary, including salaries and expenses of government employees in implementing and administering the order, except as provided in paragraph (2).

(2) REFERENDA.—Such order shall provide that the Board shall reimburse the Secretary, from assessments collected under subsection (d), for any expenses incurred by the Secretary in conducting referenda under this title, except for the salaries of Government employees.

(f) FALSE CLAIMS.—Such order shall provide that any promotion funded with assessments collected under subsection (d) may not make—

(1) any false or unwarranted claims on behalf of limes; and

(2) any false or unwarranted statements with respect to the attributes or use of any product that competes with limes for sale in commerce.

(g) PROHIBITION ON USE OF FUNDS.—Such order shall provide that funds collected by the Board under this title through assessments authorized by this title may not, in any manner, be used for the purpose of influencing legislation or governmental policy or action, except for making recommendations to the Secretary as provided for in this title.

(h) BOOKS, RECORDS, AND REPORTS.—

(1) BY THE BOARD.—Such order shall require the Board—

(A) to maintain books and records with respect to the receipt and disbursement of funds received by the Board;

(B) to submit to the Secretary from time to time such reports as the Secretary may require for appropriate accounting; and

(C) to submit to the Secretary at the end of each fiscal year a complete audit report regarding the activities of the Board during such fiscal year.

(2) BY OTHERS.—So that information and data will be available to the Board and the Secretary that is appropriate or necessary for the effectuation, administration, or enforcement of this title (or any order or regulation issued under this title), such order shall require handlers, producer-handlers, and importers who are responsible for the collection, payment, or remittance of assessments under subsection (d)—

(A) to maintain and make available for inspection by the employees of the Board and the Secretary such books and records as may be required by the order; and

(B) to file, at the times, in the manner, and having the content prescribed by the order, reports regarding the collection, payment, or remittance of such assessments.

(i) CONFIDENTIALITY.—

(1) IN GENERAL.—Such order shall require that all information obtained pursuant to subsection (h)(2) shall be kept confidential by all officers and employees of the Department and of the Board. Only such information as the Secretary considers relevant shall be disclosed to the public and only in a suit or administrative hearing, brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, involving the order with respect to which the information was furnished or acquired.

(2) LIMITATIONS.—Nothing in this subsection prohibits—

(A) issuance of general statements based on the reports of a number of handlers, producer-handlers, and importers subject to an order, if the statements do not identify the information furnished by any person; or

(B) the publication by direction of the Secretary, of the name of any person violating an order issued under section 404(a), together with a statement of the particular provisions of the order violated by such person.

(j) WITHHOLDING INFORMATION.—Nothing in this title shall be construed to authorize the withholding of information from Congress.

SEC. 406. PERMISSIVE TERMS IN ORDERS.

On the recommendation of the Board and with the approval of the Secretary, an order issued under section 404(a) may—

(1) provide authority to the Board to exempt from such order limes exported from the United States, subject to such safeguards as the Board may establish to ensure proper use of the exemption;

(2) provide authority to the Board to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures;

(3) provide that the Board may convene from time to time working groups drawn from producers, handlers, producer-handlers, importers, exporters, or the general public to assist in the development of research and marketing programs for limes;

(4) provide authority to the Board to accumulate reserve funds from assessments collected pursuant to section 405(d) to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years in which production and assessment income may be reduced, except that any reserve fund so established may not exceed the amount budgeted for operation of this title for 1 year;

(5) provide authority to the Board to use, with the approval of the Secretary, funds collected under section 405(d) for the development and expansion of lime sales in foreign markets; and

(6) provide for terms and conditions—

(A) incidental to, and not inconsistent with, the terms and conditions specified in this title; and

(B) necessary to effectuate the other provisions of such order.

SEC. 407. PETITION AND REVIEW.

(a) PETITION.—

(1) IN GENERAL.—A person subject to an order may file with the Secretary a petition—

(A) stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) HEARINGS.—A person submitting a petition under paragraph (1) shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) RULING.—After the hearing, the Secretary shall make a ruling on the petition which shall be final if in accordance with law.

(b) REVIEW.—

(1) COMMENCEMENT OF ACTION.—The district courts of the United States in any district in which such person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

(2) PROCESS.—Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS.—If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

(4) ENFORCEMENT.—The pendency of proceedings instituted pursuant to subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 408.

SEC. 408. ENFORCEMENT.

(a) JURISDICTION.—Each district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this title.

(b) REFERRAL TO ATTORNEY GENERAL.—A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this title, or any order or regulation issued under this title, if the Secretary believes that the administration and enforcement of this title would be adequately served by administrative action under subsection (c) or suitable written notice or warning to any person committing the violation.

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—Any person who willfully violates any provision of any order or regulation issued by the Secretary under this title, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense.

(2) CEASE AND DESIST ORDERS.—In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) NOTICE AND HEARING.—No order assessing a penalty or cease and desist order may be issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record before the Secretary with respect to such violation.

(4) FINALITY.—The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person against whom the order is issued files an appeal from such order with the appropriate district court of the United States, in accordance with subsection (d).

(d) REVIEW BY UNITED STATES DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.—Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (c) may obtain review of the penalty or order in the district court of the United States for the district in which such person resides or does business, or the United States district court for the District of Columbia, by—

(A) filing a notice of appeal in such court not later than 30 days after the date of such order; and

(B) simultaneously sending a copy of such notice by certified mail to the Secretary.

(2) RECORD.—The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.—A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.—Any person who fails to obey a cease and desist order issued by the Secretary after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $500 for each offense. Each day during which such failure continues shall be considered a separate violation of such order.

(f) FAILURE TO PAY PENALTIES.—If a person fails to pay an assessment of a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of the final order imposing such civil penalty shall not be subject to review.

SEC. 409. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) IN GENERAL.—The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective carrying out of the responsibilities of the Secretary under this title; or

(2) to determine whether a person subject to the provisions of this title has engaged or is engaging in any act that constitutes a violation of any provision of this title, or any order, rule, or regulation issued under this title.

(b) POWER TO SUBPOENA.—

(1) INVESTIGATIONS.—For the purpose of an investigation made under subsection (a), the Secretary may administer oaths and affirmations and may issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 407 or section 408, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district of which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under this section shall be within the judicial district where such person is an inhabitant or has a principal place of business.

SEC. 410. INITIAL REFERENDUM.

(a) REQUIREMENT.—Not later than 2 years after the date on which the Secretary first issues an order under section 404(a), the Secretary shall conduct a referendum among producers, producer-handlers, and importers who—

(1) are not exempt from assessment under section 405(d)(5); and

(2) produced or imported limes during a representative period as determined by the Secretary.

(b) PURPOSE OF REFERENDUM.—The referendum referred to in subsection (a) is for the purpose of determining whether the issuance of the order is approved or favored by not less than a majority of the producers, producer-handlers, and importers voting in the referendum. The order shall continue in effect only with such a majority.

(c) CONFIDENTIALITY.—The ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this section, or section 411, shall be held strictly confidential and shall not be disclosed.

(d) REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT.—

(1) IN GENERAL.—A portion of the assessments collected from producers, producer-handlers, and importers prior to announcement of the results of the referendum provided for in this section shall be held in an escrow account until the results of the referendum are published by the Secretary. The amount in the escrow account shall be equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(2) APPROVAL OF ORDER.—If the order is approved by a majority of the producers, producer-handlers, and importers voting in the initial referendum under subsection (a), the funds in the escrow account shall be released to be used for the purposes of this title.

(3) DISAPPROVAL OF ORDER.—

(A) PRORATION.—If—

(i) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by producers, producer-handlers, or importers; and

(ii) the plan is not approved pursuant to the referendum conducted under subsection (a);

the Board shall prorate the amount of such refunds among all eligible producers, producer-handlers, or importers who demand such refund.

(B) RIGHT TO REFUND.—A producer, producer-handler, or importer shall be eligible to receive a refund—

(i) if demand is made personally, in accordance with regulations and on a form and within a time period prescribed by the Board, but in no event less than 90 days after the date of publication of the results of the referendum; and

(ii) on submission of proof satisfactory to the Board that the person paid the assessment for which refund is sought and did not collect the assessment from another person.

(C) SURPLUS FUNDS.—Any funds not refunded under this paragraph shall be released to be used to carry out this title.

SEC. 411. SUSPENSION AND TERMINATION.

(a) FINDING OF SECRETARY.—If the Secretary finds that an order issued under section 404(a), or a provision of such order, obstructs or does not tend to effectuate the purposes of this title, the Secretary shall terminate or suspend the operation of such order or provision.

(b) PERIODIC REFERENDA.—The Secretary may periodically conduct a referendum to determine if lime producers, producer-handlers, and importers favor the continuation, termination, or suspension of any order issued under section 404(a) and in effect at the time of such referendum.

(c) REQUIRED REFERENDA.—The Secretary shall hold a referendum under subsection (b)—

(1) at the request of the Board; or

(2) if not less than 10 percent of the lime producers, producer-handlers, and importers subject to assessment under this title submit a petition requesting such a referendum.

(d) LIMITATION.—The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this title.

(e) VOTE.—The Secretary shall suspend or terminate the order at the end of the marketing year if the Secretary determines that—

(1) the suspension or termination of the order is favored by not less than a majority of those persons voting in a referendum under subsection (b); and

(2) the producers, producer-handlers, and importers comprising this majority produce and import more than 50 percent of the volume of limes produced and imported by those voting in the referendum.

SEC. 412. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for each fiscal year such funds as are necessary to carry out this title.

(b) ADMINISTRATIVE EXPENSES.—The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provisions of an order issued under this title.

SEC. 413. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this title.

TITLE V—COTTON

SEC. 501. SHORT TITLE.

This title may be cited as the "Cotton Research and Promotion Act Amendments of 1990".

SEC. 502. FINDINGS AND DECLARATION OF POLICY.

Section 2 of the Cotton Research and Promotion Act (7 U.S.C. 2101) is amended by—

(1) in the second sentence inserting "and also outside the United States" before the period;

(2) in the third sentence by striking "in large part";

(3) striking the fourth and the sixth sentences of the first paragraph;

(4) striking "The great inroads on the market and uses for United States" and inserting "The great inroads on the market and uses for"; and

(5) in the third paragraph—

(A) striking "harvested" and inserting "marketed"; and

(B) inserting "and on imports of cotton" after "United States" the first time it appears.

SEC. 503. REQUIRED TERMS IN ORDER; COTTON IMPORTS.

Section 7 of the Cotton Research and Promotion Act (7 U.S.C. 2106) is amended—

(1) in subsection (a)(2) by—

(A) striking "handler" and inserting "person"; and

(B) striking "producer";

(2) in subsection (b), in the first sentence, by—

(A) inserting "(1)" after "shall be composed of"; and

(B) striking the colon and all that follows through the end of the sentence and inserting the following: ", and (2) when imports of cotton are subject to an order, an appropriate number of representatives, as determined by the Secretary, of importers of cotton on which assessments are paid under this Act. Such importer representatives shall be appointed by the Secretary after consultation with organizations representing importers, as determined by the Secretary. Each cotton-producing State shall be entitled to at least one representative on the Cotton Board.";

(3) by amending subsection (e) to read as follows:

"(e)(1) Providing that—

"(A) the producer or other person for whom the cotton is being handled shall pay to the handler of such cotton designated by the Cotton Board pursuant to regulations issued under the order;

"(B) such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board; and

"(C) each importer shall pay to the Cotton Board on imports of cotton,

an assessment prescribed by the order, on the basis of bales of cotton handled or imported. The assessment shall cover such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board under the order, during any period specified by the Secretary.

"(2) The order shall provide for reimbursing the Secretary—

"(A) for expenses not to exceed $300,000 incurred by the Secretary in connection with any referendum conducted under section 8; and

"(B) for administrative costs incurred by the Secretary for supervisory work up to 5 employee years after an order or amendment to an order has been issued and made effective.

There shall also be included in the order a provision for reimbursing any agency of the Federal Government that assists in administering the import provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

"(3) To facilitate the collection and payment of such assessments, the Cotton Board may designate different handlers or importers or classes of handlers or importers to recognize differences in marketing practices or procedures utilized in any State or area, except that no more than one such assessment shall be made on any bale of cotton, unless specifically authorized by provisions of this subsection.

"(4) The rate of assessment prescribed by the order shall be $1 per bale of cotton handled, supplemented by an additional per bale amount not to exceed 1 percent of the value of cotton as determined by the Cotton Board and the Secretary. The rate of assessment on imports of cotton shall be determined in the same manner as the rate of assessment per bale of cotton handled, and the value to be placed on cotton imports for the purpose of determining the assessment on such imports shall be established by the Secretary in a fair and equitable manner.

"(5) No authority under this Act may be used as a basis to advertise or solicit votes in any referendum relating to the rate of assessment with funds collected under this Act.

"(6) The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy. The remedies provided in this section shall be in addition to, and not exclusive of, the remedies provided for elsewhere in this Act or now or hereafter existing at law or in equity.

"(7) The provisions of this subsection and subsection (b) shall not apply to cottonseed and the products derived from cotton and its seed.

"(8) The provisions of this subsection relating to importers and assessments on imports of cotton shall be effective only if approved in a referendum as provided in section 8(b) or 8(c).".

SEC. 504. REQUIREMENTS FOR REFERENDA.

Section 8 of the Cotton Research and Promotion Act (7 U.S.C. 2100) is amended by—

(1) inserting "(a)" before "The Secretary"; and

(2) adding at the end the following new subsections:

"(b)(1) Notwithstanding the provisions of sections 4 and 5, not later than 150 days after the date of enactment of the Cotton Research and Promotion Act Amendments of 1990, and after notice and opportunity for public comment, the Secretary shall issue a proposed amendment to the order implementing the provisions of such Act, which shall become effective as provided in paragraph (2).

"(2) Notwithstanding the provisions of subsection (a), the Secretary shall, within a period not to exceed 8 months after the date of enactment of the Cotton Research and Promotion Act Amendments of 1990, conduct a referendum among persons who have been cotton producers and importers during a representative period, as determined by the Secretary, for the purpose of ascertaining if a majority of those voting approve the proposed amendment to the order issued by the Secretary under paragraph (1). The Secretary shall announce the results of the referendum within 30 days after the date of such referendum. If the amendment is approved in the referendum, within a period not to exceed 90 days from the date of announcement of the results of such referendum, the Secretary shall publish the amendment to the order and regulations implementing the amendment provided for in this subsection.

"(c)(1) Notwithstanding the provisions of sections 4 and 5, once every five years after the date of the referendum provided for under subsection (b), the Secretary shall conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of the amendment to the order provided for in the Cotton Research and Promotion Act Amendments of 1990 if such amendment is then in effect or, if such an amendment is not in effect, whether they favor approval of such amendment. The Secretary shall make a public announcement of the results of the review within 60 days after each fifth anniversary date of the referendum provided for under subsection (b). If the Secretary determines to provide for such a referendum, the Secretary shall conduct the referendum within 12 months after a public announcement of the determination to conduct the referendum.

"(2) If the Secretary does not provide for such a referendum on the Secretary's own initiative, the Secretary shall conduct such a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum, except that, in counting such requests for a referendum, not more than 20 percent of such requests may be from producers from any one State. Producers and importers may sign up to request such a referendum at the county office of the Agricultural Stabilization and Conservation Service, or county extension agent, or by mailing such a request to the Secretary, as prescribed in regulations. The signup period shall be for a period not to exceed 90 days, shall commence 60 days after the Secretary makes a public announcement of a determination not to provide for a referendum on the Secretary's own initiative, and shall be publicized by the Secretary and the Cotton Board immediately after such public announcement. The referendum shall be held within 12 months after the end of the signup period, if requested by the requisite number of persons.

"(3) The amendment to the order provided for in this subsection shall not be effective if it is disapproved by a majority of cotton producers and importers of cotton voting in the referendum.".

SEC. 505. SUSPENSION AND TERMINATION OF ORDERS.

Section 9(b) of the Cotton Research and Promotion Act (7 U.S.C. 2108(b)) is amended to read as follows:

"(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of a number of producers and importers (if subject to the order) equivalent to at least 10 percent of those persons voting in the most recent referendum, to determine whether cotton producers and importers subject to the order favor the termination or suspension of the order. The Secretary shall suspend or terminate the order at the end of the marketing year, as defined in the order, whenever the Secretary determines suspension or termination of the order is approved by a majority of producers and importers (subject to the order) voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the production and importation of cotton and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.".

SEC. 506. AMENDMENTS TO THE ORDER.

Section 10 of the Cotton Research and Promotion Act (7 U.S.C. 2109) is amended to read as follows:

"PROVISIONS APPLICABLE TO AMENDMENTS

"SEC. 10. (a) Except as provided in subsection (b), the provisions of this Act applicable to orders shall be applicable to amendments to orders.

"(b) No amendment to an order issued under this Act shall be effective unless the Secretary determines that—

"(1) with respect to an amendment referred to in section 8(b) or (8)(c), the amendment is approved by producers and importers of cotton as provided in such section; or

"(2) with respect to any other amendment, that the amendment is approved by a majority of cotton producers and importers subject to the order voting in the referendum.

"(c) The disapproval of any amendment to an order issued under this Act shall not be deemed to invalidate such order.".

SEC. 507. PRODUCER REFUNDS.

Section 11 of the Cotton Research and Promotion Act (7 U.S.C. 2110) is amended by—

(1) striking "Notwithstanding any other provision" and inserting "(a) Notwithstanding any other section and except as provided in subsection (b),"; and

(2) adding at the end the following new subsection:

"(b) The right of a producer to demand a refund under subsection (a) shall terminate if the proposed amendment of the order implementing the Cotton Research and Promotion Amendments Act of 1990 is approved in the referendum provided for under section 8. Such right shall terminate 30 days after the date the Secretary announces the results of such referendum if such proposed amendment is approved. Such right shall be reinstated if the amendment should be disapproved in any subsequent referendum.".

SEC. 508. DEFINITIONS.

Section 17 of the Cotton Research and Promotion Act (7 U.S.C. 2116) is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "means"; and

(B) by striking "its seed." and inserting the following: "its seed and (2) imports of upland cotton. The term 'cotton' shall not, however, include any entry of imported cotton by an importer that has a value or weight less than any de minimis figure established in accordance with regulations issued by the Secretary. Any de minimis figure established under this paragraph shall be such as to minimize the burden in administering the assessment provision but still provide for the maximum participation of imports of cotton in the assessment provisions of this Act.";

(2) in subsection (d), by inserting after "cottonseed" the following: "or, for the purposes of sections 3, 6(c), and 13, any person who imports cotton, including de minimis amounts of cotton described in subsection (c),"; and

(3) by adding at the end a new subsection to read as follows:

"(h)(1) the term 'importer' means any person who enters, or withdraws from warehouse, cotton produced outside the United States for consumption in the customs territory of the United States.

"(2) The term 'import' means any such entry.".

TITLE VI—HONEY

SEC. 601. SHORT TITLE.

This title may be cited as the "Honey Research, Promotion, and Consumer Information Act Amendments of 1990".

SEC. 602. DEFINITIONS.

Section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) is amended by—

(1) in paragraph (8)—

(A) striking "or who acts" and inserting "or acts"; and

(B) inserting before the period at the end the following: "and who is listed in the import records as the importer of record for such honey or honey products"; and

(2) adding at the end the following new paragraph:

"(18) The term 'exporter' means any person who exports honey or honey products from the United States.".

SEC. 603. REQUIRED TERMS IN ORDERS.

Section 7 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4606) is amended—

(1) in subsection (c)—

(A) by amending paragraph (2)(C) to read as follows:

"(C) two members who are either importers or exporters, of which at least one shall be an importer, appointed from nominations submitted by the Committee from recommendations by industry organizations representing importer and exporter interests;";

(B) in the matter following paragraph (2)(E), by striking "nominate an alternate or alternates" and inserting "submit nominations for an alternate";

(C) at the end of paragraph (2), by adding the following sentence: "However, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer described in subparagraph (A) or as an alternate to such producer."; and

(D) in paragraph (4), inserting before the period at the end the following: ", except that if, as a result of the adjustment of the boundaries of the regions established under paragraph (2)(A), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed"; and

(2) by adding at the end the following new subsection:

"(k) Any patent on any product, copyright on any material, or any invention, product formulation or publication developed through the use of funds collected by the Honey Board shall be the property of the Honey Board. The funds generated from any such patent, copyright, invention, product formulation, or publication shall inure to the benefit of the Honey Board.".

SEC. 604. ASSESSMENTS.

(a) ASSESSMENT RATE AND EXEMPTIONS.—Section 7 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4606) is further amended—

(1) in subsection (e)(1) by striking the second and third sentences and inserting the following: "The assessment rate shall be $0.01 per pound, with payment to be made in the manner described in section 9."; and

(2) by striking subsection (e)(2) and inserting the following:

"(2)(A) Honey that is consumed at home by the producer or importer or donated by the producer or importer to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sold shall be exempt from assessment under the order, except that donated honey that later is sold in a commercial outlet by a donee or a donee's assignee shall be subject to assessment on such sale.

"(B)(i) A producer, producer-packer, or importer who produces or imports during any year less than 6,000 pounds of honey shall be eligible for an exemption in such year from paying an assessment on honey such person distributes directly through local retail outlets, as determined by the Secretary, during such year.

"(ii) In order to claim an exemption under this subparagraph, a person shall submit an application to the Honey Board stating the basis on which the person claims the exemption for such year.

"(iii) If, after a person claims an exemption from assessments for any year under this subparagraph, such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Honey Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

"(3) If a producer, producer-packer, or importer does not pay any assessments under this Act due to the applicability to such person of the exemptions from assessments provided in paragraph (2), then such producer, producer-packer, or importer shall not be considered a producer or importer for purposes of voting in any referendum conducted under this Act during the period the person's exemption from all assessments is in effect.".

(b) COLLECTION OF ASSESSMENTS; REFUNDS.—Section 9 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4608) is amended—

(1) in subsection (a), by striking "and (e)" and inserting "(e), and (i)";

(2) by amending subsection (d) to read as follows:

"(d) In any case in which a loan is made with respect to honey under the honey price support loan program established under the Agricultural Act of 1949, or successor statute, the Secretary shall provide for the assessment to be deducted from

the disbursement of any loan funds made to the producer and for the amount of such assessment to be forwarded to the Honey Board. The Secretary shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds promptly after each occasion when an assessment is deducted from any such loan funds under this subsection.";

(3) in subsection (f), by inserting after "assessments" the following: ", and persons receiving an exemption from assessments under section 7(e)(2),";

(4) in subsection (h), by—

(A) striking "Any" and inserting "(1)(A) Except as otherwise provided in paragraph (2), any";

(B) striking "to importers" and inserting "to an importer";

(C) striking "from importers" and inserting "from such importer"; and

(D) adding at the end the following:

"(B) A producer that has obtained a honey price support loan under the Agricultural Act of 1949, or successor statute, may obtain a refund if the producer has submitted to the Honey Board the statement received under subsection (d) of the amount of assessment deducted from the loan funds and has otherwise complied with this subsection, even though the loan with respect to which the assessment was collected may still be outstanding and final settlement has not been made.

"(2) With respect to the order in effect on the date of the enactment of this paragraph, following the referendum on such order required under section 13(b)(2), a producer or importer may obtain a refund of an assessment under such order as provided in paragraph (1) only if the Secretary determines that the proposal to terminate refunds under the order is defeated in such referendum."; and

(5) by inserting after subsection (h) the following:

"(i) If a first handler or the Secretary fails to collect an assessment from a producer under this section, the producer shall be responsible for the payment of the assessment to the Honey Board.".

SEC. 605. FIRST RECONFIRMATION REFERENDUM.

(a) IN GENERAL.—Section 13(b) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4612) is amended by—

(1) striking "Five" and inserting "(1) Except as otherwise provided in paragraph (2), five";

(2) striking "continuation, termination," and inserting "termination"; and

(3) inserting at the end the following:

"(2)(A) In lieu of the first referendum otherwise required to be conducted under paragraph (1) for the order in effect on the date of the enactment of this paragraph, the Secretary shall conduct a referendum to determine if honey producers and importers favor—

"(i) the continuation of the order; and

"(ii) termination of the authority for producers and importers to obtain a refund of assessments under section 9(h)(1).

The referendum shall be conducted at the time the first referendum otherwise required under paragraph (1) would have been conducted, except for the operation of this paragraph.

"(B)(i) The Secretary shall terminate such order at the end of the marketing year during which such referendum is conducted, if the Secretary determines that termination of the order is approved or favored by not less than a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum.

"(ii) If the Secretary determines that termination of the authority for producers and importers to receive refunds of assessments under section 9(h)(1) is favored or approved by a majority of the producers and importers voting in such referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum, then the Secretary shall amend such order as necessary to reflect the vote of producers and importers. Such amendment to the order shall become effective on the date it is issued, but in no case more than 180 days after the conduct of such referendum.".

(b) CONFORMING AMENDMENT.—Section 13(d) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4612) is amended by—

(1) striking "such order" and inserting "an order";

(2) inserting "in which a referendum is conducted under subsection (b) or (c)" after "marketing year"; and

(3) striking "of the order".

SEC. 606. INVESTIGATIONS AND POWER TO SUBPOENA.

The Honey Research, Promotion, and Consumer Information Act is amended by inserting after section 11 (7 U.S.C. 4610) the following new section:

"INVESTIGATIONS AND POWER TO SUBPOENA

"SEC. 11A. (a) IN GENERAL.—The Secretary may make such investigations as the Secretary deems necessary—

"(1) for the effective administration of this Act; or

"(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this Act, or of any order, rule, or regulation issued under this Act.

"(b) Power to Subpoena.—

(1) INVESTIGATIONS.—For the purpose of an investigation made under subsection (a), the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

"(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 10 of section 11, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

"(c) AID OF COURTS.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

"(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

"(f) HEARING SITE.—The site of any hearings held under this section shall be within the judicial district where such person resides or has a principal place of business.".

SEC. 607. CONFORMING AMENDMENT TO ORDER.

Notwithstanding any provision of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 et seq.), the Secretary of Agriculture, after notice and opportunity for public comment, shall issue an amendment to the order in effect under such Act on the date of the enactment of this Act to conform such order to the amendments made by this title, which shall become effective on the date of the publication of such amendment to the order in the Federal Register without a referendum thereon (except for the referendum specifically provided for under section 605). The Secretary shall issue such amendment to the order in final form not later than 150 days after the date of the enactment of this Act.

Amend the title so as to read: "An Act entitled the 'Omnibus Agricultural Commodity Promotion and Research Act of 1990' ".

BRIEF EXPLANATION

PECANS

Title I of the bill authorizes the Secretary of Agriculture to publish a plan to enable domestic growers, handlers, shellers and importers of pecans to develop, finance, and carry out a nationally coordinated pecan research and promotion program. The program will be administered by a 15-member Pecan Marketing Board composed of eight pecan growers, four pecan shellers, one pecan handler, one pecan importer, one public representative, and, at the option of the Board, one non-voting consultant or advisor representing a country other than the United States.

The plan will define the powers and duties of the board, which are to include the power and duty to:

(1) administer the plan;

(2) make regulations to effectuate the plan;

(3) meet, organize, select officers, and establish working committees;

(4) hire necessary employees;

(5) prepare and submit for the approval of the Secretary recommended rates of assessment on pecans and a budget for the administration of the plan;

(6) carry out, and enter into contracts to carry out, programs and projects of research, promotion, industry information, and consumer information;

(7) receive, investigate, and report to the Secretary complaints of violations of the plan;

(8) keep books and records and furnish the Secretary with such information as the Secretary may request;

(9) recommend to the Secretary amendments to the plan; and

(10) cover the administrative costs incurred by the Secretary in implementing and administering the order, except for the salaries of Government employees incurred in conducting referenda.

The maximum rate of assessment on pecans will be 2 cents per pound of inshell pecans or the equivalent. Additionally, an optional one-quarter cent special State assessment would be authorized to be remitted to the Board for the purpose of utilizing such funds by State pecan marketing boards for research projects to promote pecans conducted pursuant to State law.

A delayed referendum will be required to be conducted no later than 2 years after the effective date of the Act. Approval of the program would require a majority vote of growers, grower-shellers and importers voting in the referendum. Funds equal to 10 percent of the total assessments collected during the period between issuance of the plan and conduct of the referendum will be required to be placed in an escrow account for pro rata payment of refunds if the program is not approved. If the referendum is approved, no refunds will be paid and all funds in the escrow account will be returned to the Board to be used to administer the program established in title I of the bill.

Title I of the bill will also prohibit the Board from engaging in any action or using any funds to influence legislation or governmental action (other than recommending to the Secretary amendments to the plan), engaging in any action that would be a conflict of interest, or engaging in any false or misleading advertising.

MUSHROOMS

Title II of the bill authorizes the Secretary of Agriculture to publish and order to enable domestic producers and importers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for mushroom promotion, research, and consumer information. The program would be administered by a Mushroom Council consisting of at least four and not more than nine members, as determined by the levels of U.S. production and imports.

The order will define the powers and duties of the Council, which are to include the power and duty to:

(1) administer the order;

(2) make rules and regulations to effectuate the order;

(3) appoint members of the Council to serve on an executive committee;

(4) propose, receive, evaluate, approve, and submit for the approval of the Secretary budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, and to contract with appropriate persons to implement such plans or projects;

(5) develop and propose to the Secretary voluntary quality and grade standards for mushrooms;

(6) receive, investigate, and report to the Secretary complaints of violations of the order;

(7) recommend to the Secretary amendments to the order; and

(8) maintain books and records and submit such reports to the Secretary, as the Secretary may prescribe.

The maximum assessment rate to be paid by mushroom producers and importers will be no more than one-quarter cent per pound for the first year, one-third cent per pound for the second year, one-half cent per pound for the third year, and one cent per pound for the fourth and subsequent years. Producers or importers of less than 500,000 pounds per year would be exempt from the assessment and other provisions of the title.

Title II also provides that within the 60 day period prior to the effective date of the order, the Secretary must conduct a referendum among producers and importers of mushrooms. Approval is by a simple majority of those eligible and voting in the referendum. No provision is included for assessment refunds. The Secretary may conduct subsequent referenda beginning 3 years following the effective date of an order if requested by 30 percent of those subject to the order.

Title II also prohibits the use of any funds received by the Council for the purpose of influencing legislation or government action or policy, other than the recommendation to the Secretary of amendments to the order or of voluntary grade and quality standards for mushrooms.

POTATOES

Title III of the bill amends the Potato Research and Promotion Act, subject to approval in a referendum of potato producers and importers, to provide for the elimination of the authority for the refund of assessments, to require that assessments be paid on imported tablestock, frozen, processed or seed potatoes, to provide for importer representation on the National Potato Promotion Board, and to require comparable reporting and recordkeeping requirements to importers as is currently required of domestic handlers. Title III also extends coverage of the Act to the States of Alaska and Hawaii.

Title III will also provide that any amendment to a plan issued under the Act will be subject to a referendum, and reduce the vote

necessary to approve a plan from two-thirds of those voting in a referendum to a majority of those voting in a referendum.

A delayed referendum on the amendments to the plan authorized by the bill will be required to be conducted no later than 2 years after the effective date of the Act. Approval of the amendments would require a majority vote of the producers and importers of potatoes voting in a referendum. Funds equal to 10 percent of the total assessments collected during the period between issuance of the amendments and the conduct of the referendum will be required to be placed in an escrow account for pro rata payment of refunds if the amendments are not approved.

LIMES

Title IV of the bill authorizes the Secretary of Agriculture to issue an order to enable domestic producers, producer-handlers, and importers of fresh limes to develop, finance, and carry out a nationally coordinated program for lime promotion, research, and consumer information. The program will be administered by an 11 member Lime Board composed of seven producers, three importers, and one public representative. The maximum authorized assessment rate will be 1 cent per pound of fresh limes.

The powers and duties of the Board are to:

(1) administer the order;

(2) prescribe rules and regulations to effectuate the order;

(3) receive, investigate, and report to the Secretary accounts of violation of the order;

(4) make recommendations to the Secretary for amendments to the order;

(5) employ a manager and staff;

(6) prepare and submit to the Secretary for approval a budget including a plan for research, promotion, and consumer information regarding limes;

(7) maintain books and records and submit to the Secretary such reports as the Secretary may require;

(8) refrain from making any false or unwarranted claims on behalf of limes; and

(9) pay the expenses incurred by the Secretary in implementing and administering the order, and in conducting referenda (except for salaries of Government employees).

Title IV contains a provision for a delayed referendum to be conducted no later than 2 years after the implementation of the order. Approval of the order will require a simple majority of those lime producers, producer-handlers, and importers voting in the referendum. Producers, producer-handlers, and importers of less than 35,000 pounds of limes per year would be exempt from the assessment.

Funds equal to 10 percent of the total assessments collected during the period between issuance of the order and conduct of the referendum will be placed in an escrow account for pro rata payment of refunds if the program is not approved. If the referendum is approved, all funds in the escrow account will be used for the purposes of the order.

COTTON

Title V of the bill will amend the Cotton Research and Promotion Act to provide procedures for the issuance of an amendment to the current cotton research and promotion order to—

(1) terminate producers' right to refunds, if the amendment to the order is approved by a majority of producers and importers voting in a referendum;

(2) authorize the assessment of importers of raw upland cotton at a rate to be determined in the same manner as the rate of assessment paid by domestic producers of upland cotton;

(3) exempt from assessment imports of raw upland cotton in an amount less than a *de minimis* figure established by the Secretary;

(4) include an appropriate number of importers on the Cotton Board; and

(5) increase from $200,000 to $300,000 the amount of expenses for which the Secretary must be reimbursed that are incurred in connection with the referendum, and provide that the agency of Government that assists in the administration of the import provisions of the order will be reimbursed for reasonable expenses.

Title V will also require that a referendum be held within 8 months after the date of enactment, and that the amendment to the order will become effective only after the Secretary certifies that a majority of those producers and importers voting in a referendum approve of the amendment. Procedures are also included to allow subsequent referenda on the amendment provided for in the bill, or on the underlying cotton research and promotion order, upon the request of 10 percent or more of the producers and importers voting in the previous referendum.

HONEY

Title VI of the bill amends the Honey Research, Promotion, and Consumer Information Act to—

(1) provide, subject to approval in a referendum of honey producers and importers, for the elimination of the authority for the refund of assessments:

(2) reduce the limit on the rate of assessments on honey from a maximum of 4 cents per pound to a maximum of 1 cent per pound;

(3) provide an exemption from the payment of assessments by small producers or importers for honey consumed by the producer or importer, honey donated to a nonprofit organization, and honey sold directly to consumers at a local retail outlet;

(4) require that honey producers and importers claiming an exemption from the payment of assessments keep and make available to the Secretary certain records;

(5) clarify that refunds of assessments to honey importers, if refunds are available under the order, will be made on a pro rata basis from among the funds available for such refunds;

(6) clarify the eligibility of certain members to serve on the Honey Board; and

(7) provide that any product, material, or invention developed through the use of funds collected by the Honey Board will be the property of the Honey Board.

Purpose and Need

H.R. 3664, the Omnibus Agricultural Commodity Promotion and Research Act of 1990 will authorize the creation of commodity promotion and research programs for pecans, mushrooms, and limes, and amend the existing programs for potatoes, cotton, and honey.

These programs are designed to allow farmers to fund and operate market and product development efforts for specific commodities. Since the first such program was developed in 1935 for Florida citrus, some 312 promotion programs covering 80 farm commodities have been established by the Federal and state governments. Presently, 90% of all U.S. producers contribute a total of more than $530 million a year to such programs to promote their products both in the United States and abroad.

Commodities covered by national promotion programs which are overseen by the Department of Agriculture include beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, wool, and mohair. These programs, similar to the programs established in H.R. 3664, have raised the following amounts in the past year: the cotton program collected $39.5 million, the dairy program raised $77.2 million, and the beef, pork, honey, and potato programs collected $41.7, $26.3, $2.5 and $5.9 million, respectively.

While many of the existing research and promotion programs have been established for major commodities such as beef, pork, and dairy, the new programs established by H.R. 3664 provide for the producers of specialty commodities such as pecans, mushrooms, and limes to pool their resources and have a positive impact on the markets for these commodities. H.R. 3664 will help producers to educate consumers of fruits, vegetables, nuts and other commodities about the uses, nutritional benefits, and safety of these commodities and the products derived from them. The research and promotion programs established in or amended by H.R. 3664 can be effective tools in this educational process.

TITLE I—PECANS

Title I will enable domestic growers, handlers, shellers, and importers of pecans to develop, finance, and carry out a nationally coordinated pecan research and promotion program to be administered by a 15-member Pecan Marketing Board.

After 2 years, the Board is expected to generate up to $6 million per year based on a maximum assessment rate of 2 cents per pound of inshell pecans, or the equivalent for shelled pecans.

Pecans are a native American tree that have been in commercial production since the early 1990's. From that time until the present the marketplace has been able to economically absorb the annual production of pecans, and the pecan industry has been profitable.

New plantings coming into production throughout the United States, and imports from Mexico, threaten to upset the current bal-

ance between supply and demand for pecans and to reduce pecan prices. Pecan growers and shellers are attempting to assimilate this new production into the market as rapidly as possible.

The pecan industry is one that has made great strides the last 10 or 15 years in its horticultural and production practices, but has lagged in market research and development. By comparison, 57 percent of the U.S. almond crop and 30 percent of the walnut crop is exported, while only 2 percent of the U.S. pecan crop is exported.

Taste preference tests have shown that consumers choose pecans as their favorite or second favorite nut 90 percent of the time. Additionally, pecans are high in protein, have no cholesterol, and have other attributes that the industry could capitalize on if the information was made available to consumers on a broad basis.

The need for this research and promotion order is immediate. Increased annual consumption of pecans is a common goal of all facets of the pecan industry. A well conceived, properly funded research and promotion program, as authorized the bill, can help to achieve that goal.

TITLE II—MUSHROOMS

Title II of the bill will enable producers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for fresh mushroom promotion, research, and consumer information, in order to strengthen the fresh mushroom industry's position in the marketplace, maintain and expand existing markets for fresh mushrooms, and develop new markets and uses for fresh mushrooms.

The general approach taken by the legislation is similar to that used in promotion and research legislation for other commodities. It will provide for the issuance, by the Secretary of Agriculture, of an order providing assessment procedures applicable to producers and first handlers of mushrooms and establishing an administrative framework for the operation of the program. The mushroom order would be national in scope and would cover all varieties of cultivated fresh mushrooms commercially grown or imported into the United States. Mushrooms used in processing would not be included.

According to the 1988–1989 report on mushroom production by the National Agricultural Statistics Service of the Department of Agriculture, there are approximately 276 agaricus mushroom growers in the United States who produced 483,503,000 pounds of mushrooms for the fresh market at an average price of 97 cents per pound, thus generating a total sales value of $472,377,000. There were approximately 232 growers of exotic mushrooms, producing 5,493,000 pounds for sale at an average price of $3.99 per pound. These new specialty mushrooms, such as the shiitake and oyster varieties, were once almost exclusively imported, but are now domestically grown. However, practically all of these growers produce fewer than 500,000 pounds annually and therefore would not be assessed, although they would experience many of the same benefits from the program as other producers.

Fresh mushroom production in the United States has grown from 41 million pounds in 1966 to 483 million pounds in 1989. In

1989, 72 percent of the mushroom production in the United States was for the fresh market, compared with only 30 percent in the early 1970s. Pennsylvania is the largest mushroom producing state, with approximately 40 percent of the volume of national production. Mushrooms are available year round, largely because of controlled growing conditions in facilities in 38 states.

The mushroom industry faces many challenges. For example, annual per capita consumption of fresh mushrooms in Canada is approximately 6 pounds, Great Britain is at 6.8 pounds and the Netherlands boasts 8.2 pounds. However, in the United States, per capita consumption is only about 3 pounds. Therefore, the opportunity for increased sales and consumption of mushrooms is tremendous.

The mushroom program authorized by title II of H.R. 3664, would, if approved, allow mushroom growers to address such opportunities and address other marketing issues in an industrywide, cooperative manner. Such a program could also provide a higher mushroom industry profile, increase consumer demand for mushrooms, and increase the stability of the mushroom market.

Research funded under the program authorized by title II of H.R. 3664 could provide valuable information for improving markets for mushrooms. Specialty crops such as mushrooms have never been a major focus of Federal research dollars, and given today's budgetary situation, the Federal Government cannot be expected to provide additional assistance for commodity specific research. The bill will help the mushroom industry to enhance research efforts, and the benefits derived from such research will be of use to the entire industry.

A significant effort in research and education could also be undertaken to address consumers' concerns about the nutritional value and safety of mushrooms and to provide consumers with information on the nutritional benefits, the proper selection, storage, handling, and preparation of fresh mushrooms—all to the benefit of the consumer, as well as the industry.

TITLE III—POTATOES

Title III of the bill will amend the Potato Research and Promotion Act (hereafter the "Act") to provide the National Potato Promotion Board (hereafter the "Board") with improved methods for collecting assessments from potato importers, as well as from domestic potato producers, in order to fund the conduct of potato promotion activities and marketing research, and to fund consumer education about the use of potatoes.

Under the authority of the Potato Research and Promotion Act of 1971 the Secretary of Agriculture currently appoints potato producers throughout the United States to serve on the Board. The Board, which currently consists of 95 members, collects assessments on all potatoes used for human consumption and for seed for the purpose of funding a program of research, promotion, and consumer information designed to expand the market for potatoes.

Current law authorizes the collection of assessments only on those fresh potatoes produced in the United States. H.R. 3664 would authorize the collection of assessments on imported potatoes

as well, and would assure that the responsibilities of those who benefit from the research and promotion activities are shared by those producers. The advertising and consumer information programs carried out by the Board since 1971 have been strictly generic in nature. That is, there have been no specific references to any particular brand of potatoes, nor has there been any effort to distinguish between potatoes produced in the United States for human consumption and such potatoes that are imported. The Board has received a number of awards for the excellence of its advertising programs.

The Board has also established and operated a nutrition education program for 15 years, through which the Board has developed and distributed information to consumers through point-of-sale efforts, nutritionists, educators, and the press.

To the extent that the market is enhanced through the Board's activities for potatoes produced in the United States, that same market enhancement is afforded imported potatoes. Even though the market is enhanced for the imported product, importers are not currently paying their share of the costs associated with the Board's research and education program. The need, therefore, for the Board to have authority to assess imported potatoes is clear. H.R. 3664 would correct this inequity.

Current law provides producers with the right to demand refunds of assessments paid under the Act. If a potato producer wishes not to participate in the research and education program carried out by the Board, then that producer may petition the Board and demand a refund of the assessments levied on the producers' potatoes sold in commercial channels.

The current refund provision results in a situation in which about 5 percent of growers are given refunds totaling about 15 percent of total assessments collected. Too many large producers are getting a "free ride" on the program. Not all of the producers are paying the assessment, but all producers are benefiting from the market expansion activities of the Board. H.R. 3664 would correct this inequity by allowing the elimination of the refund provisions of the Act, subject to a referendum of both domestic producers and importers.

TITLE IV—LIMES

Title IV of the bill will authorize a program to allow domestic producers, producer-handlers, and importers of fresh limes to develop, finance, and carry out a nationally coordinated program for lime promotion, research, and consumer information.

The program, which would be administered by an 11 member lime board composed of seven producers, three importers, and one public representative, is expected to generate up to $2 million per year, based on an assessment rate of not to exceed 1 cent per pound of fresh limes.

Limes are produced almost exclusively in two states: Florida and California. During 1988, according to the Department of Agriculture, approximately 75% of domestically produced limes for fresh use were shipped from Florida and approximately 25% were shipped from California.

Since the 1960's when the Federal marketing order was adopted, market conditions have changed drastically with respect to the quantity of limes imported into the United States. The major source of imported limes is Mexico, which supplied about 94% of the limes imported into the United States in 1988. Limes are imported from Mexico throughout the year, with the largest quantities arriving in August, September, and October. Small amounts of limes are also imported into the United States from the Bahamas, Honduras, and Costa Rica. In 1988, imports provided about half of total fresh lime consumption in the United States.

Under the program authorized by H.R. 3664, imported limes would be assessed at the same rate as limes grown in the United States and sold in commercial markets since the benefits of any lime research or generic promotion efforts funded under the order would flow to importers of limes as well as to domestic lime producers.

TITLE V—COTTON

Title V of H.R. 3664 amends the Cotton Research and Promotion Act to authorize a referendum to determine whether domestic cotton growers and cotton importers support a mandatory, uniform assessment on domestically produced and imported upland cotton.

During the 1950's and early 1960's, the U.S. cotton industry saw its domestic markets steadily deteriorate, primarily because of aggressive marketing by the synthetic fiber industry. Thus, in the early 1960's, attention was focused on the need for the nation's cotton producers to initiate a self-help program to conduct research, product development, advertising, and promotion of cotton products. It was hoped that such a program would halt the decline of cotton sales in domestic markets, and even regain and expand these markets.

In order to finance such a program, Congress passed the Cotton Research and Promotion Act in 1966. The Act authorized a referendum to determine if U.S. cotton producers would agree to a self-imposed assessment of $1.00 per bale to fund research and promotion efforts, and established a Cotton Board to administer the program. The producer referendum was subsequently held and the program was overwhelmingly approved.

In 1976 Congress amended the Cotton Research and Promotion Act to end federal supplemental financing of the program, and to authorize a producer referendum on whether or not to increase the producer assessments. The referendum was approved, and subsequently the cotton research and promotion program has been conducted exclusively with income generated by assessments on domestically produced cotton.

Currently, the assessment rate is $1.00 per bale of cotton plus 0.6 percent of the value of the cotton at the point of first sale. There has been no contribution of federal funds since 1977.

The primary competition in the market for cotton remains the highly concentrated synthetic fiber industry, which spends $350 million annually on fiber research and promotion programs. In an attempt to be more competitive with the synthetic fiber industry cotton producers in the United States have, for the past 20 years,

continued to assess themselves to pay for research and promotion. Although the annual program budget has averaged only about $18 million, this spending has generated significant contributions to the betterment of the cotton industry through research, new product development, and by building consumer awareness and recognition of cotton products.

As a result of the investments made by cotton producers, through a coordinated research program utilizing contracts and cooperative agreements with State experiment stations, a module system to more efficiently handle seed-cotton has been developed. Textile research has resulted in improved flame retardant treatments, improved permanent press treatments, more economical dyeing procedures, the adaptability of new textile equipment to cotton processing, and vital information on health and safety issues. The cooperative advertising and promotion programs have built consumer awareness and increased demand for cotton products, as evidenced by the market share gains made by cotton in numerous end-products.

The Committee recognizes the positive benefits of a strong, coordinated research and promotion program and feels that additional funding would allow cotton producers to conduct an even more effective program of research and promotion in order to maintain a viable, competitive cotton industry and to provide consumers with valuable information about cotton and cotton products.

It is important to note that imported cotton and cotton products have benefited from the producer-financed research and promotion program. In fact, imported cotton products accounted for 39 percent of total domestic cotton consumption in 1986. The bill is designed to ensure that imported cotton contributes a fair share of the cost of cotton market development, by requiring the payment of assessments on imported cotton that are equivalent to those now imposed on domestically produced cotton.

The bill is also consistent with international trade agreements that require assessments to be applied equally, because checkoff contributions will be required for all domestic growers by the elimination of the existing refund authority. In the interest of fairness, the bill authorizes the representation by cotton importers on the governing body that supervises the operation of the research and promotion program.

The Committee does not intend for the bill to result in additional administrative costs for the federal government. Moreover, the bill provides that any such administrative costs be reimbursed through the program.

It is also noted that the Committee has heard from individuals who would support periodic (every five years) producer referenda on whether or not the cotton research and promotion program should be continued. Therefore, the Secretary should consider conducting periodic referenda with an interval of approximately five years to determine producer support for the program.

The cotton research and promotion program has proven its effectiveness in finding new and better ways to use cotton, and in regaining and expanding markets for this important crop. H.R. 3664 is designed to make this self-help effort even more effective.

TITLE VI—HONEY

Title VI of H.R. 3664 will make a number of amendments to the Honey Research, Promotion, and Consumer Information Act to improve the operation of the honey checkoff program under that Act.

The Honey Research, Promotion, and Consumer Information Act, enacted in 1984, provides that statutory authority for the national honey checkoff program. Under this program, producers and importers of honey pay a uniform assessment on each pound of honey they market to cover the costs of coordinated programs of research, promotion, and consumer information necessary to maintain and expand existing markets for honey and to develop new markets for honey.

United States honey production averaged 197 million pounds per year during 1980–88. Production for the three most recent crop years, 1986, 1987, and 1988, averaged 213 million pounds, and 211 million pounds were produced in 1989. Annual domestic use of honey increased from an average of 241 million pounds in the 1960's, to 245 million pounds in the 1970's, and to 266 million pounds for 1980–87. Honey use reached a record 331 million pounds in 1987, up from 291 million pounds in 1986.

Total exports of United States honey have increased steadily from 6.5 million pounds in 1985 to 9.2, 12.4, and 13.9 million pounds in 1986, 1987, and 1988, respectively.

The four leading honey producers (China, the Soviet Union, the United States, and Mexico) account for about half of world honey production. Total honey consumption for the 10 major honey producing countries trended upward through the 1980's.

The honey checkoff program has been in effect for just three and a half years, and in this relatively short time the program has shown great promise for strengthening markets for honey and facilitating the development of new uses for honey.

The honey promotion programs of the National Honey Board, which administers the checkoff program, have contributed to the increased commercial sales of honey and honey containing products. In 1988, 154 new honey-containing products were introduced which will likely further stimulate honey consumption. Furthermore, there were 493 different honey-containing products available for consumers in 1988. Approximately 320 national companies market food products including honey.

The Honey Board has used food technology experts to explore industrial uses of honey. Information garnered from this research has been distributed throughout the food manufacturing industry, and up to date technical information may be obtained from a telephone hotline maintained by the Honey Board. In conjunction with the Department of Agriculture, the Honey Board has also studied and documented the economic benefits to United States agriculture of the pollination services offered by the Nation's beekeeping industry.

In recent years, the most effective commodity research and promotion checkoff programs have operated without refunds. This no refund approach ensures a steady, adequate flow of income to a checkoff program, permitting the conduct of longer-term, more effective research, promotion, and information programs. This ap-

proach is fair to all producers and importers because it prevents those producers and importers who would otherwise garner refunds of their assessments from enjoying the benefits of the program without contributing their fair share to the program. Further, referendum results clearly indicate that producers will strongly support programs that do not provide for refunds. These benefits of a no refund policy should accrue to the honey checkoff program.

Also, the "free rider" refund authority could actually threaten the existence of the honey checkoff program. This is because the number and amount of refunds may continue to rise as more honey producers decide they are foolish to pay if their neighbor does not. Eventually, refunds may take away so much of the available income that it will become difficult to operate an effective honey research and promotion program.

H.R. 3664 will address the problems created by the current refund policies in the honey checkoff program in a fair and democratic fashion. The bill will authorize a special referendum of those who pay the assessments to determine whether they support going to a uniform no refund policy. Specifically, the bill will revise the procedure for the conduct of the first reconfirmation referendum on the existing checkoff program under the Act, currently scheduled for 1991. The Secretary of Agriculture will be required to put an additional question to producers and importers voting in the referendum to determine whether a majority of honey producers and importers support the elimination of the authority to obtain refunds of assessments under the Act.

To assuage any concerns relating to possible future increases in assessment rates, the bill will delete the current provisions of the Act that would allow the assessment rate under the Act to increase to as much as four cents per pound of honey. Instead, the authorized assessment rate would be frozen at its current level of one cent per pound.

Section-by-Section Analysis

Section 1—Short title; table of contents

Section 1 provides that the bill may be cited as the "Omnibus Agricultural Commodity Promotion and Research Act of 1990" and sets forth the table of contents of the bill.

TITLE I—PECAN PROMOTION

Section 101—Short title

Section 101 provides that title I of the bill may be cited as the "Pecan Promotion and Research Act of 1990".

Section 102—Findings and Declaration of Policy

Section 102(a) sets forrth congressional findings that—

(1) pecans are a native American nut that are an important food and a valuable part of the human diet;

(2) the production of pecans plays a significant role in the economy of the Unnited States;

(3) pecans must be high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply of pecans;

(4) the development, maintenance, and expansion of markets for pecans are vital to the welfare of pecan industry participants and to the economy of the United States;

(5) there exists established State organizations conducting programs to promote the consumption of pecans;

(6) the cooperative development, financing, and implementation of a coordinated national program of pecan promotion, research, industry information, and consumer information are necessary to maintain and expand existing markets and develop new markets for pecans; and

(7) pecans move in interstate and foreign commerce, and pecans that do not move in such channels of commerce directly burden or affect interstate commerce in pecans.

Section 102(b) will declare it to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this title, of an orderly procedure for developing, financing (through adequate assessments on pecans produced or imported into the United States), and carrying out an effective, continuous, coordinated program of promotion, research industry information, and consumer information designed to—

(1) strengthen the pecan industry's position in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for pecans; and

(3) develop new markets and uses for pecans.

Subsection (c) of section 102 provides that nothing in title I of the bill may be construed to provide for the control of production or otherwise limit the right of any person to produce pecans.

Section 103—Definitions

Section 103 provides definitions for the following terms, as used in title I of the bill:

(1) BOARD.—The term "Board" means that Pecan Marketing Board established in section 106(b).

(2) COMMERCE.—The term "commerce" means interstate, foreign, or intrastate commerce.

(3) CONFLICT OF INTERESTS.—The term "conflict of interest" means a situation in which a member has a direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture, or other business entity dealing directly or indirectly with Board.

(4) CONSUMER INFORMATION.—The term "consumer information" means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of pecans.

(5) DEPARTMENT.—The term "Department" means the United States Department of Agriculture.

(6) DISTRICT.—The term "district" means a geographical area of the United States, as determined by the Board and approved by the Secretary, in which there is produced approximately

one-fourth of the volume of pecans produced in the United States.

(7) FIRST HANDLER.—The term "first handler" means the first person who buys or takes possession of pecans from a grower for marketing. If a grower markets pecans directly to consumers, such grower shall be considered the first handler with respect to pecans grown by such grower.

(8) GROWER.—The term "grower" means any person engaged in the production and sale of pecans in the United States who owns, or who shares the ownership and risk of loss of, such pecans.

(9) GROWER-SHELLER.—The term "grower-sheller" means a person who—

(A) shells pecans, or has pecans shelled for such person, in the United States; and

(B) during the immediately previous year, grew 50 percent or more of the pecans such person shelled or had shelled for such person.

(10) HANDLE.—The term "handle" means receipt of in-shell pecans by a sheller or first handler, including pecans produced by such sheller or first handler.

(11) IMPORTER.—The term "importer" means any person who imports pecans from outside of the United States for sale in the United States.

(12) INDUSTRY INFORMATION.—The term "industry information" means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the pecan industry.

(13) IN-SHELL PECAN.—The term "in-shell pecan" means a pecan that has a shell that has not been removed.

(14) TO MARKET.—The term "to market" means to sell or offer to dispose of pecans in any channel of commerce.

(15) MEMBER.—The term 'member" means a member of the Board.

(16) PECAN.—The term "pecan" means the nut of the pecan tree carya illinoensis.

(17) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(18) PLAN.—The term "plan" means a plan issued under section 104.

(19) PROMOTION.—The term "promotion" means any action, including paid advertising, taken by the Board pursuant to title I of the bill, to present a favorable image of pecans to the public with the express intent of improving the competitive position of pecans in the marketplace and stimulating sales of pecans.

(20) RESEARCH.—The term "research" means any type of test, study, or analysis designed to advance the image, desirability, usage, marketability, production, product development, or quality of pecans.

(21) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(22) SHELL.—The term "shell" means to remove the shell from an in-shell pecan.

(23) SHELLED PECAN.—The term "shelled peacan" means a pecan kernel, or portion of a kernel, after the pecan shell has been removed.

(24) SHELLER.—The term "sheller" means any person who—

(A) shells pecans or has pecans shelled for the account of such person; and

(B) during the immediately previous year, purchased more than 50 percent of the pecans such person shelled or had shelled for such account.

(25) STATE.—The term "State" means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(26) UNITED STATES.—The term "United States" means collectively the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 104—Issuance of plans

Section 104(a) will provide that, in order to carry out the declared policy of section 102(b), the Secretary must issue, and from time to time amend, plans applicable to growers, grower-shellers, shellers, first handlers, and importers of pecans. Any such plan must be national in scope, and not more than one plan may be in effect under title I at any one time.

Section 104(b) will prescribe the procedures for the issuance of a plan, including that—

(1) the Secretary may propose the issuance of a plan under this title, or an association of pecan growers or grower-shellers or any other person that will be affected by this title may request the issuance of, and submit a proposal for such a plan;

(2) the Secretary shall—

(A) not later than 60 days after the receipt of a request and proposal by an interested person for a plan; or

(B) when the Secretary determines to propose a plan, publish a proposed plan and give due notice and opportunity for public comment on the proposed plan;

(3) after notice and opportunity for public comment are given, the Secretary must issue a plan, taking into consideration the comments received and including in the plan provisions necessary to ensure that the plan is in conformity with the requirements of title I of the bill; and

(4) the plan must be issued and become effective not later than 150 days following the publication of the proposed plan.

Section 104(c) will authorize the Secretary, from time to time, to amend any plan issued under section 104, consistent with the requirement of section 114 of the bill.

Section 105—Regulations

Section 105 of the bill will provide that the Secretary may issue such regulations as are necessary to carry out title I of the bill.

Section 106—Required Terms in Plans

Section 106(a) will require that each plan issued under title I of the bill contain the terms and conditions prescribed in section 106.

Section 106(b) will provide for the establishment of the Pecan Marketing Board and for certain administrative provisions governing the operation of the Board.

Section 106(b)(1) will require that the plan establish a Pecan Marketing Board to carry out the program referred to in section 102(b) of the bill.

Section 106(b)(2) will require that the Board carry out programs and projects that will provide maximum benefit to the pecan industry in all parts of the United States and that the Board only generically promote pecans, as opposed to engaging in the promotion of branded pecans or pecans marketed by any individual producer, company, or other entity.

Section 106(b)(3) will require that the Board be made up of 15 members, including—

(A) eight members who are growers;

(B) four members who are shellers;

(C) one member who is a first handler and who derives over 50 percent of the member's gross income from buying and selling pecans;

(D) one member who is an importer of pecans into the United States, who is nominated by the Board;

(E) one member representing the general public, who is nominated by the Board; and

(F) at the option of the Board, a consultant or advisor representing the views of pecan producers in a country other than the United States who may be chosen by the Board to attend Board functions as a nonvoting member.

Section 106(b)(4) will provide for the representation of members on the Board.

Section 106(b)(4)(A) will require that of the eight grower members of the Board referred to in section 106(b)(3)(A), two members shall be from each of the four districts established under section 103(6).

Section 106(b)(4)(B) will require that of the four sheller members of the Board referred to in paragraph (3)(B)—

(i) two members shall be selected from among shellers whose place of residence is east of the Mississippi River; and

(ii) two members shall be selected from among shellers whose place of residence is west of the Mississippi River.

Section 106(b)(4)(C) will require the first handler member of the Board referred to in section 106(b)(3)(C) to be selected from among first handlers whose place of residence is in one of the four districts established under section 103(6).

Section 106(b)(4)(D) will require the importer member of the Board referred to in section 106(b)(3)(D) to be an individual who imports pecans into the United States.

Section 106(b)(4)(E) will provide that the public member of the Board referred to in paragraph (3)(E) may not be a grower, grower-sheller, sheller, first handler, or importer.

Section 106(b)(5) will require each member of the Board to have an alternate with the same qualifications as the member such alternate would replace.

Section 106(b)(6) will require that not more than one member of the Board may be from each State in each district, except that the State of Georgia may have two growers from such State representing the district that includes the State of Georgia.

Section 106(b)(7) will require that the Board, in accordance with regulations approved by the Secretary, at least once each 3 years and not more than once each 2 years—

(A) review the geographic distribution of pecan production throughout the United States; and

(B) if warranted, recommend to the Secretary that the Secretary reapportion a district in order to reflect the geographic distribution of pecan production.

Section 106(b)(8) will provide for the selection process for members of the Board.

Section 106(b)(8)(A) will require the Board to give reasonable publicity to the industry regarding the nomination of persons interested in being nominated for Board membership.

Section 106(b)(8)(B) will require that each grower and sheller be eligible to vote for the nomination of members who represent their respective class of members on the Board, and that growers be eligible to vote for the nomination of the first handler members of the Board.

Section 106(b)(8)(C) will provide that each person (each grower and sheller) referred to in section 106(b)(8)(B) shall have one vote in voting for nominees to the Board. The two eligible candidates receiving the largest number of votes cast for each Board position for each class of members shall be the nominees for such position.

Section 106(b)(8)(D) will provide that, except for the establishment of the initial Board as provided under section 106(b)(8)(G), the nominations for members for each Board position made under section 106(b)(8)(C) and sections 106(b)(3)(D) and 106(b)(3)(E) must be certified by the Board and submitted to the Secretary no later than May 1, or such other date that may be recommended by the Board and approved by the Secretary, preceding the commencement of the term of office for Board membership, as such terms of office are established in section 106(b)(9).

Section 106(b)(8)(E) will require the Secretary to appoint, to each vacant Board position, one individual from among the nominees certified by the Board and submitted to the Secretary under section 106(b)(8)(D).

Section 106(b)(8)(F) will authorized the Secretary to reject any nominee to the Board submitted under section 106(b)(8)(D). If there are insufficient nominees from which to appoint members to the Board as a result of the Secretary's rejecting such nominees, the Secretary is expected to solicit additional nominees and such additional nominees must be submitted to the Secretary in the manner prescribed under section 106(b)(8)(D).

Section 106(b)(8)(G) will require the Secretary to establish an initial Board from among the nominations solicited by the Secretary. For the purpose of obtaining nominations for the grower, sheller, and first handler members of the initial Board as described in sec-

tion 106(b)(3) (A), (B), and (C), respectively, the Secretary will be required to perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate. Nominations for the members of the initial Board representing pecan importers and the general public, as described in section 106(b)(3) (D) and (E), respectively, must be made in accordance with section 106(b)(3).

Section 106(b)(8)(H) will provide that if growers and shellers fail to nominate individuals for appointment to the Board, the Secretary may appoint members on a basis provided for in the plan. If the Board fails to nominate an importer or a public representative, such member may be appointed by the Secretary without a nomination.

Section 106(b)(9) will prescribe the terms of office for members of the Board.

Section 106(b)(9)(A) will provide that the term of office of members of the Board will be 3 years, except that the members appointed to the initial Board established under section 106(b)(8)(G) will serve, porportionately, for terms of 1, 2, and 3 years, as determined by the Secretary.

Section 106(b)(9)(B) will provide that each member of the Board will continue to serve until a successor is appointed by the Secretary, notwithstanding the limitation on service on the Board prescribed under section 106(b)(9)(C).

Section 106(b)(9)(C) will prohibit service by any individual as a member of the Board for more than 2 consecutive 3-year terms.

Section 106(b)(9)(D) will require the Secretary to fill any vacancy on the Board created by the death, removal, resignation, or disqualification of any member of the Board, by requesting that at least 2 eligible nominations for a successor for each such vacancy be submitted by the Board in the manner provided in section 106(b)(8). If at least 2 eligible nominations are not submitted to the Secretary by the Board, the Secretary shall determine the manner of submission of nominations for the vacancy.

Section 106(c)(10) will provide that each member of the Board will serve without compensation, but will require that such members be reimbursed for necessary and reasonable expenses incurred in the performance of duties for and approved by the Board.

Section 106(c) will prescribe the powers and duties of the Board that must be defined by the plan, including the power and duty—

(1) to administer the plan in accordance with its terms and conditions;

(2) to make regulations [1] to effectuate the terms and conditions of the plan;

(3) to meet, organize, and select from among members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines appropriate;

(4) to establish working committees of persons other than Board members;

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[1] The term "regulations" used in this sense is not intended to mean a "rule" or "regulation" in the sense of a federal agency "rule" or "regulation". The Board's regulations would not have the force and effect of law.

(5) to employ such persons, other than Board members, as the Board considers necessary, and to determine the compensation and define the duties of such persons;

(6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal period, a recommended rate of assessment under section 108 of the bill, and a fiscal period budget of the anticipated expenses in the administration of the plan, including the probable costs of all programs and projects;

(7) to develop programs and projects, subject to section 106(d);

(8) to enter into contracts or agreements, subject to section 106(e), to develop and carry out programs or projects of promotion, research, industry information and consumer information;

(9) to carry out programs or projects of research, promotion, industry information, and consumer information, and to pay the costs of such projects with assessments collected pursuant to section 108;

(10) to keep minutes, books, and records that reflect the actions and transactions of the Board, and to promptly report the minutes of each Board meeting to the Secretary;

(11) to appoint and convene, from time to time, working committees comprised of growers, grower-shellers, first handlers, shellers, importers, and the public to assist in the development of promotion, research, industry information, and consumer information programs for pecans;

(12) to invest, pending disbursement under a program or project, funds collected through assessments authorized under this title, only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision therof;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States,

except that income from any such invested funds may be used for any purpose for which the invested funds themselves may be used under this title;

(13) to receive, investigate, and report to the Secretary complaints of violations of the plan;

(14) to furnish the Secretary with such information as the Secretary may request;

(15) to recommend to the Secretary amendments to the plan; and

(16) to develop and recommend to the Secretary for approval such rules and regulations as may be necessary for the development and execution of programs or projects, or as may otherwise be necessary, to carry out the plan.

The Committee intends that, in the issuance and oversight of the order authorized under title I of the bill, the Secretary will provide

appropriate safeguards to ensure that the funds invested by the Board as authorized under section 106(c)(12) will be invested only in safe and sound investment accounts, certificates, obligations, or other instruments, as determined appropriate by the Secretary. In order to ensure the safe and sound investment of such funds, the Secretary may require that such investments be fully insured or guaranteed as to principle or interest by the appropriate local, State, or Federal agency, or such other entity as the Secretary determines appropriate, consistent with section 106(c)(12).

Section 106(d) will prescribe the provisions that must be included in the plan regarding the programs and budgets of the Board.

Section 106(d)(1) will require the plan to provide that the Board submit to the Secretary for approval any program or project of research, promotion, consumer information, or industry information, and that the Board may not implement any program or project prior to the approval of such program or project by the Secretary.

Section 106(d)(2) will require the plan to provide that the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of such fiscal year, submit to the Secretary, for the approval of the Secretary, budgets of the Board's anticipated expenses (including the reimbursement of expenses of members of the Board authorized under section 106(b)(10) and disbursements in the implementation of the plan, including the projected costs of research, promotion, consumer information, and industry information programs and projects.

Section 106(d)(3) will require the plan to authorize the Board to incur such expenses for programs or projects of reserach, promotion, consumer information, or industry information, and other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any implementation, administrative, and referendum costs incurred by the Department of Agriculture pursuant to title I of the bill.

Section 106(d)(4) will require the Board to pay the expenses of the Board referred to in section 106(d)(3) from assessments collected under section 108 of the bill or from funds borrowed by the Board pursuant to section 106(d)(5).

Section 106(d)(5) will authorize the Board to borrow funds, as approved by the Secretary, for capital outlays and startup costs.

Section 106(d)(6) will prohibit the Board from spending more than 20 percent of the assessments collected under section 108 of the bill for administration of the Board. This prohibition will not take effect until the date that is 3 years after the date of the establishment of the Board.

Section 106(e)(1) will require the plan, in order to ensure the efficient use of funds, to authorize the Board to enter into contracts or agreements for the implementation and carrying out of programs or projects of pecan research, promotion, consumer information, or industry information, including contracts with grower and grower-sheller organizations, and for the payment of the cost thereof with funds received by the Board under the plan.

Section 106(e)(2) will require any such contract or agreement to provide that—

(A) the contracting party must develop and submit to the Board a program or project together with a budget or budgets

that show estimated costs to be incurred for such program or project;

(B) the program or project will become effective on the approval of the Secretary; and

(C) the contracting party keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

Section 106(e)(3) will require the plan to authorize the Board to contract with grower and grower-sheller organizations for any services in addition to those authorized under section 106(e)(1), and require any such contract to include provisions comparable to those required under section 106(e)(2).

Section 106(f)(1) will provide that the plan require the Board to—

(A) maintain such books and records as the Secretary may prescribe, and that such books and records be available to the Secretary for inspection and audit;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Board.

Section 106(f)(2) will require the Board to cause its books and records to be audited by an independent auditor at the end of each fiscal year, and to submit to the Secretary a report of such audit.

Section 106(g) will prohibit the Board from engaging in any action, or using any funds received by the Board under this title, to—

(1) influence legislation or governmental action, other than recommending to the Secretary amendments to the plan;

(2) engage in any action that would be a conflict of interest; or

(3) engage in any advertising that may be false or misleading.

Section 106(h)(1) will provide that the plan must require each first handler, grower-sheller, or importer to—

(A) maintain and submit to the Board any reports considered necessary by the Secretary to ensure compliance with this title; and

(B) make available during normal business hours, for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out this title, including such records as are necessary to verify any required reports.

Section 106(h)(2) will require that the records required under section 106(h)(1) be maintained for 2 years beyond the fiscal period of the applicability of such records.

Section 106(h)(3)(A) will require that, except as provided in section 106(b)(3) (B) and (D), all information obtained from books, records, or reports required to be maintained under section 106(b)(1) be kept confidential, and not be disclosed to the public by any person.

Section 106(h)(3)(B) will provide that the information referred to in section 106(h)(3)(A) may be disclosed to the public only if—

(i) the Secretary considers the information relevant;

(ii) the information is revealed in a suit or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party; and

(iii) the information relates to this title.

Section 106(h)(3)(C) will require that any disclosure of confidential information in violation of section 106(h)(3)(A) by any Board member or employee of the Board, except as required by other law or allowed under section 106(h)(3) (B) or (D), must be considered a violation of this title.

Section 106(h)(3)(D) will provide that nothing in section 106(h)(3) may be construed to prohibit—

(i) the issuance of general statements, based on reports submitted under section 106(f)(1), of the number of persons subject to the plan or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating the plan, together with a statement of the particular provisions of the plan violated by such person.

Section 106(h)(4)(A) will provide that, except as provided in section 112, information obtained under this title may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

Section 106(h)(4)(B) will provide that any person violating section 106(h), on conviction, will be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and that if such person is an officer or employee of the Board or the Department, such person must also be removed from office.

Section 106(h)(5) will provide that nothing in title I of the bill may be construed to authorize the withholding of information from Congress.

Section 106(i) will require the plan to provide that the assessments collected under section 108 must be used for payment of the expenses in implementing and administering title I of the bill, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this title, except for the salaries of Government employees incurred in conducting referenda.

Section 106(j) will require that the plan also contain such terms and conditions, not inconsistent with title I of the bill, as determined necessary by the Secretary to effectuate the provisions of title I.

Section 107—Permissive terms in plan

Section 107(a) will provide that a plan issued pursuant to title I of the bill may contain one or more of the terms and conditions listed in section 107.

Section 107(b) will provide that the plan may authorize (1) an exemption from the plan for pecans used for nonfood uses and (2) the

Board to require satisfactory safeguards against the improper uses of such exemptions.

Section 107(c) will provide that, in order to recognize differences in marketing practices and procedures utilized in different pecan production areas, the plan may authorize the designation of different payment and reporting schedules for growers, grower-shellers, first handlers and importers.

Section 107(d) will provide that the plan may authorize the establishment, issuance, effectuation, and administration of appropriate programs or projects for the promotion of pecans and for the disbursement of necessary funds for such purposes, except that—

(1) any such program or project must be directed toward increasing the general demand for pecans; and

(2) such promotional activities must comply with other restrictions on the use of funds that are established under title I of the bill.

Section 107(e) will provide that the plan may provide for (1) establishing and carrying on research, consumer information, and industry information projects and studies to the end that the marketing and utilization of pecans may be encouraged, expanded, improved, or made more efficient, and (2) for the disbursement of necessary funds for such purposes.

Section 107(f) will provide that the plan may authorize the accumulation, from assessments collected pursuant to title I of the bill, of reserve funds to permit an effective and continuous coordinated program of research, consumer information, industry information and promotion in years when the production of pecans and the resulting assessment income may be reduced. The total reserve fund that may be accumulated under section 107(f) is prohibited from exceeding the amount budgeted for the operation of the plan for 2 years.

Section 107(g) will provide that the plan may authorize the use of funds collected under title I of the bill, with the approval of the Secretary, for the development and expansion of pecan sales in foreign markets.

Section 108—Assessments

Section 108(a) will provide that, during the effective period of a plan issued pursuant to title I of the bill, assessments will be—

(1) levied on all pecans produced in, and all pecans imported into, the United States and marketed; and

(2) deducted from the payment made to a grower for all pecans sold to a first handler.

Section 108(b) will provide for a limitation on the assessments made under section 108(a) such that not more than one assessment may be assessed under subsection (a) on a grower (as remitted by a first handler) or importer, for any lot of pecans handled or imported.

Section 108(c)(1) will provide that the assessments required under section 108(a) must be remitted to the Board by—

(A) first handlers; and

(B) importers.

Section 108(c)(2) will provide for the timing of the remittance of assessments to the Board by first handlers, grower-shellers, and importers.

Section 108(c)(2)(A) will require each first handler who is not a grower-sheller and who is required to remit an assessment under section 108(c)(1) to remit such assessment to the Board no later than the last day of the month following the month that the pecans being assessed were purchased or marketed by the first handler.

Section 108(c)(2)(B) will require each first handler who is a grower-sheller and who is required to remit an assessment under secton 108(c)(1) to remit such assessment to the Board, to the extent practicable, in payments of one-third of the total annual amount of such assessment due to the Board on January 31, March 31, and May 10, or such dates as may be recommended by the Board and approved by the Secretary, during the fiscal year in which the pecans being assessed were harvested.

Section 108(c)(2)(C) will require importers of pecans into the United States to pay the assessment at the time the pecans enter the United States and to remit such assessment to the Board.

Section 108(d)(1) will provide that, except as provided in section 108(d)(2), assessment rates will be recommended by the Board and approved by the Secretary, except that the maximum assessment may not exceed—

(A) during the period commencing on the effective date of the issuance of the plan and ending on the date the referendum is conducted under section 112(a), one-half cent per pound for in-shell pecans, as determined by the Board and approved by the Secretary; and

(B) after the date the referendum is conducted under section 112(a), 2 cents per pound for in-shell pecans.

Section 108(d)(2) will require that the rate of assessment of shelled pecans must be twice the rate established for in-shell pecans pursuant to paragraph (1).

Section 108(d)(3) will require that, notwithstanding any other provision of title I of the bill, with the approval of the Secretary and if authorized by State law and requested by such State, a special assessment of one-quarter cent per pound for in-shell pecans, and an appropriate per-pound assessment for shelled pecans as adjusted under section 108(d)(2) must be remitted to the Board for the purpose of utilizing such funds by a State pecan marketing board for research projects to promote pecans pursuant to State law. The Board will be required to collect such assessments and, upon receipt, to remit such assessments to the State, within a time period mutually agreed upon between the State and the Board, and approved by the Secretary. In the collection of such State assessments, neither the Board nor the Secretary may in any manner enforce the collection or remittance of any such payment by producers of such State assessments or investigate the nonpayment of such State assessments, except to provide to a State the names of growers from whom such assessments were collected and the respective amounts of assessments collected. The Secretary will be authorized to make such regulations as may be necessary to carry out the provisions of section 108.

Section 108(e)(1) will require that a late-payment charge be imposed on any person who fails to remit to the Board, on or before the due date established by the Board under section 108(c)(2), the total amount for which such person is liable.

Section 108(e)(2) will require that the amount of the late-payment charge imposed under section 108(e)(1) be prescribed by the Board with the approval of the Secretary.

Section 108(f) will provide for the establishment of an escrow account to provide for assessment refunds and establish the procedure for the refund of such assessments.

Section 108(f)(1) will require the Board, during the period beginning on the effective date of a plan first issued under section 104 (after enactment of title I of the bill) and ending on the date the initial referendum is conducted under section 112(a) of the bill, to—

(A) establish an escrow account to be used for assessment refunds; and

(B) place funds in such account in accordance with section 1089(f)(2).

Section 108(f)(2) will require the Board to place in the escrow account, from assessments collected during the period referred to in section 108(f)(1), an amount equal to 10 percent of the assessments collected during such period.

Section 108(f)(3) will provide any grower, grower-sheller, or importer the right to demand and receive from the Board a one-time refund of assessments paid by or on behalf of such grower, grower-sheller, or importer during the period referred to in section 108(f)(1) (subject to the provisions of sections 108(f)(4), (5), and (6)) if—

(A) such grower, grower-sheller, or importer is required to pay such assessments;

(B) such grower, grower-sheller, or importer does not support the program established under this title;

(C) such grower, grower-sheller, or importer demands such refund prior to the conduct of the referendum under section 112(a); and

(D) the plan is not approved pursuant to the referendum conducted under section 112(a).

Section 108(f)(4) will require that the demand for a refund of assessments must be made by a grower, grower-sheller, or importer in accordance with regulations, on a form, and within a time period prescribed by the Board.

Section 108(f)(5) will require that refunds under section 108 must be made on submission of proof satisfactory to the Board that such grower, grower-sheller, or importer paid the assessment for which refund is demanded.

Section 108(f)(6) will require the Board to prorate the amount of refunds made under section 108 among all eligible growers, grower-shellers, and importers who demand such refunds if—

(A) the amount in the escrow account established under section 108(f)(1) is not sufficient to refund the total amount of assessments demanded by eligible growers, grower-shellers, or importers; and

(B) the plan is not approved pursuant to the referendum conducted under section 112(a).

Section 108(f)(7) will require that, if the plan is approved pursuant to the referendum conducted under section 112(a), then all funds in the escrow account shall be returned to the Board for use by the Board in accordance with title I of the bill.

Section 109—Petition and review

Section 109(a)(1) will provide that a person subject to a plan issued under title I of the bill may file with the Secretary a petition—

(A) stating that the plan, any provision of the plan, or any obligation imposed in connection with the plan is not in accordance with law; and

(B) requesting a modification of the plan or an exemption from the plan.

Section 109(a)(2) will require that a petitioner under section 109(a)(1) be given the opportunity for a hearing on the petition, on the record and in accordance with regulations issued by the Secretary.

Section 109(a)(3) will require the Secretary, after the hearing provided under section 109(a)(2), to make a ruling on the petition. Section 109(a)(3) will also provide that the Secretary's ruling will be final if in accordance with law.

Section 109(b)(1) will vest the district courts of the United States in any district in which a person who is a petitioner under section 109(a) resides or carries on business with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under section 109(a).

Section 109(b)(2) will require service of process in proceedings under section 109(b) to be conducted in accordance with the Federal Rules of Civil Procedure.

Section 109(b)(3) will require the court, if it determines that the ruling of the Secretary under section 109(a)(3) is not in accordance with law, to remand the matter to the Secretary with directions either—

(A) to make such ruling as the court determines to be in accordance with law; or

(B) to take such further proceedings as, in the opinion of the court, the law requires.

Section 109(b)(4) will prohibit the pendency of proceedings instituted under section 109(a) from impeding, hindering, or delaying the Attorney General or the Secretary from taking any enforcement action authorized under section 110 of the bill.

Section 110—Enforcement

Section 110(a) will vest the district courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain a person from violating, title I of the bill or any plan, order, rule, or regulation issued under title I of the bill.

Section 110(b) will require that a civil action to be brought under section 110 (other than as provided under subsection (f)) must be referred to the Attorney General for appropriate action, except that the Secretary will not be required to refer to the Attorney General a violation of title I of the bill or any plan, order, rule, or

regulation issued under title I if the Secretary believes that the administration and enforcement of title I would be adequately served by administrative action authorized under section 110(c) or by providing a suitable written notice or warning to any person committing the violation.

Section 110(c)(1)(A) will authorize the Secretary to assess, for each violation, a civil penalty of not less than $1,000 nor more than $10,000 against a person who willfully violates any provision of title I of the bill or any plan, order, rule, or regulation issued under title I, including the failure to pay, collect, or remit any assessment or late-payment charge required of the person under title I or any plan, order, rule, or regulation issued under title I.

Section 110(c)(1)(B) will provide that each violation is considered a separate offense.

Section 110(c)(2) will authorize the Secretary, in addition to or in lieu of the civil penalty authorized under section 110(c)(1), to issue an order requiring such person to cease and desist from continuing such violation.

Section 110(c)(3) will prohibit any penalty from being assessed or any cease and desist order from being issued by the Secretary under section 110(c) unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation.

Section 110(c)(4) will require that the order of the Secretary assessing a penalty or imposing a cease and desist order will be final and conclusive unless the person against whom the order is issued files an appeal from the Secretary's order in the manner prescribed under section 110(d).

Section 110(d)(1) will provide that a person against whom a civil penalty is assessed or a cease and desist order is issued under section 110(c) may obtain judicial review of such penalty or order in the district court of the United States for the district in which such person resides or does business, or in the United States District court for the District of Columbia, if such person—

(A) files, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in such court; and

(B) simultaneously sends a copy of the notice by certified mail to the Secretary.

Section 110(d)(2) will require the Secretary to promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

Section 110(d)(3) will provide that a finding of the Secretary under section 110 may be set aside only if the finding is found to be unsupported by substantial evidence.

Section 110(e) will provide that any person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate district court has entered a final judgment in favor of the Secretary, will be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing on the record and for judicial review under the procedures specified in sections 110 (c) and (d), of not more than $1,000 for each offense. Each day during which the failure to obey the cease and desist order continues must be considered a separate violation of such order.

Section 110(f) will provide that if a person fails to pay a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate district court has entered a final judgment in favor of the Secretary, the Secretary will be required to refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of such order imposing such civil penalty will not be subject to review.

Section 111—Investigations and power to subpoena

Section 111(a) will authorize the Secretary to make such investigations as the Secretary deems necessary—

(1) for the effective administration of title I of the bill;

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of title I, or of any plan, rule, or regulation issued under title I.

Section 111(b)(1) will authorize the Secretary, for the purpose of an investigation made under section 111(a), to administer oaths and affirmations and issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

Section 111(b)(2) will authorize the presiding officer of an administrative hearing held under section 109 or section 110 of the bill to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

Section 111(c) will authorize the Secretary, in case of contumacy by, or refusal to obey a subpoena issued to, any person, to invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). Section 111(c) will also authorize the court to issue an order requiring such person to comply with such a subpoena.

Section 111(d) will permit a court issuing an order under section 111(c) to punish any failure to obey such order of the court as a contempt thereof.

Section 111(e) will provide that the service of process in any case under section 111 may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

Section 111(f) will require any hearings under section 111 to be held within the judicial district where such person resides or has a principal place of business.

Section 112—Requirement of referendum

Section 112(a) will require the Secretary, not later than 24 months after the effective date of the plan first issued under section 104 of the bill, to conduct an initial referendum among growers, grower-shellers, and importers, who during a representative

period determined by the Secretary have been engaged in the production or importation of pecans, for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the plan.

Section 112(b)(1) will require the Secretary, after the initial referendum required under section 112(a), to hold a subsequent referendum on the request of the Board or 10 percent or more of the total number of growers, grower-shellers, and importers, to determine if growers, grower-shellers, and importers favor the termination or suspension of the plan.

Section 112(b)(2) will require the Secretary to terminate or suspend such plan, in accordance with section 113(b), whenever the Secretary determines that such suspension or termination is favored by a majority of those voting in a referendum.

Section 112(c) will require the Board to reimburse the Secretary, from assessments collected by the Board, for any expenses incurred by the Department (with the exception of the salaries of Government employees) in connection with the conduct of any referendum under title I of the bill.

Section 112(d)(1) will require that referenda conducted pursuant to title I of the bill be conducted in such a manner as is determined by the Secretary.

Section 112(d)(2) will require a grower, grower-sheller, or importer who chooses to vote in any referendum conducted under title I of the bill to register in person prior to the voting period at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary, after receiving the notice described in section 112(d)(4).

Section 112(d)(3) will require a grower, grower-sheller, or importer who votes in any referendum conducted under title I of the bill to vote in person at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary.

Section 112(d)(4) will require each Agricultural Stabilization and Conservation Service office to notify all growers, grower-shellers, and importers in the area of such office, as determined by the Secretary, at least 30 days prior to a referendum conducted under this title. Such notice shall explain the registration and voting procedures for the referendum as established under section 112(d) of the bill.

Section 113—Suspension or termination of plan

Section 113(a) will require the Secretary to terminate or suspend the operation of the plan or any provision of the plan whenever the Secretary finds that the plan or any provision of the plan obstructs or does not tend to effectuate the declared policy of title I of the bill.

Section 113(b) will require the Secretary, if, as a result of any referendum conducted under title I of the bill, the Secretary determines that suspension or termination of a plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum, to suspend or terminate, as the case may be—

(1) the collection of assessments under the plan within 6 months after making such determination; and

(2) activities under the plan in an orderly manner as soon as practicable.

Section 113(c) will provide that the termination or suspension of any plan, or any provision thereof, shall not be considered a plan within the meaning of title I of the bill.

Section 114—Amendments

Section 114 will provide that the provisions of title I of the bill that are applicable to a plan shall also be applicable to amendments to a plan.

Section 115—Authorization of appropriations

Section 115(a) will authorize to be appropriated for each fiscal year such sums as are necessary to carry out the provisions of title I of the bill.

Section 115(b) will prohibit the use of funds appropriated to carry out title I of the bill for the payment of the expenses or expenditures of the Board in administering any provision of any plan.

TITLE II—MUSHROOMS

Section 201—Short title

Section 201 will provide that title II of the bill may be cited as the "Mushroom Promotion, Research, and Consumer Information Act of 1990".

Section 202—Findings and declaration of policy

Section 202(a) will set forth congressional findings that—

(1) mushrooms are an important food that is a valuable part of the human diet;

(2) the production of mushrooms plays a significant role in the Nation's economy in that mushrooms are produced by hundreds of mushroom producers, distributed through thousands of wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) mushroom production benefits the environment by efficiently using agricultural byproducts;

(4) mushrooms must be high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of this important product are available to the people of the United States;

(5) the maintenance and expansion of existing markets and uses, and the development of new markets and uses, for mushrooms are vital to the welfare of producers and those concerned with marketing and using mushrooms, as well as to the agricultural economy of the Nation;

(6) the cooperative development, financing, and implementation of a coordinated program of mushroom promotion, research, and consumer information are necessary to maintain and expand existing markets for mushrooms; and

(7) mushrooms move in interstate and foreign commerce, and mushrooms that do not move in such channels of commerce directly burden or affect interstate commerce in mushrooms.

Section 202(b) will declare it to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in title II of the bill, of an orderly procedure for developing, financing through adequate assessments on mushrooms produced domestically or imported into the United States, and carrying out, an effective, continuous, and coordinated program of mushroom promotion, research, and consumer and industry information designerd to—

(1) strengthen the mushroom industry's position in the marketplace;

(2) maintain and expand existing markets and uses for mushrooms; and

(3) develop new markets and uses for mushrooms.

Section 202(c) will prohibit construing anything in title II of the bill as providing for the control of production or otherwise limiting the right of individual producers to produce mushrooms.

Section 203—Definitions

Section 203 will provide definitions for the following terms, as used in title II of the bill—

(1) COMMERCE.—The term "commerce" means interstate, foreign, or intrastate commerce.

(2) CONSUMER INFORMATION.—The term "consumer information" means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

(3) COUNCIL.—The term "Council" means the Mushroom Council established under section 2054(b) of the bill.

(4) DEPARTMENT.—The term "Department" means the Department of Agriculture.

(5) FIRST HANDLER.—The term "first handler" means any person, as described in an order issued under title II of the bill, who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

(6) IMPORTER.—The term "importer" means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

(7) INDUSTRY INFORMATION.—The term "industry information" means information and programs that are designed to lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

(8) MARKETING.—The term "marketing" means the sale or other disposition of mushrooms in any channel of commerce.

(9) MUSHROOM.—The term "mushrooms" means all varieties of cultivated mushrooms grown within the United States for the frest market, or imported into the United States for the fresh market, that are marketed, except that such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed, as may be determined by the Secretary.

(10) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(11) PRODUCER.—The term "producer" means any person engaged in the production of mushrooms who owns or who shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year. The Committee, as well as the industry, recognizes growers with production under this level as small producers who are "hobby" growers and who do not have a major impact on the commercial market. However, the benefits of the program would accrue to these small producers as well.

(12) PROMOTION.—The term "promotion" means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

(13) RESEARCH.—The term "research" means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of mushrooms.

(14) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(15) STATE AND UNITED STATES.—The terms "State" and "United States" include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 204—Issuance of orders

Section 204(a) will require the Secretary, in order to effectuate the declared policy of section 202(b) and subject to the procedures provided in section 204(b), to issue orders under title II of the bill applicable to producers, importers, and first handlers of mushrooms. Section 204(a) will also require any such order to be national in scope, and prohibit any more than one order from being in effect at any one time.

Section 204(b)(1) will provide that (A) the Secretary may propose the issuance of an order pursuant to title II of the bill, or (B) an association of mushroom producers or any other person that will be affected by title II may request the issuance of, and submit a proposal for, such an order.

Section 204(b)(2) will require the Secretary to publish a proposed order and give due notice and opportunity for public comment on the proposed order not later than 60 days after the receipt of a request and proposal by an interested person for an order, or when the Secretary determines to propose an order, as provided under this subsection.

Section 204(b)(3) will require the Secretary to issue an order, after notice and opportunity for public comment are given, as provided in paragraph (2), taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of title II of the bill. Section 204(b)(3) will also require such order to be issued and to become effective not later than 180 days following publication of the proposed order, if approved by producers and importers of mushrooms as provided in section 206(a).

Section 204(c)(1) will authorize the Secretary, from time to time, to amend any order issued under section 204.

Section 204(c)(2) will require that the provisions of title II of the bill applicable to an order will also be applicable to amendments to the order.

Section 205—Required terms in orders

Section 205(a) will require each order issued under title II of the bill to contain the terms and conditions prescribed in section 205.

Section 205(b)(1)(A) will require the order to provide for the establishment of, and selection of members to, a Mushroom Council that will consist of at least 4 members and not more than 9 members.

Section 205(b)(1)(B) will require, except as provided for in section 205(b)(2), the members of the Council to be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary, with the limitation that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

Section 205(b)(2)(A) will require the Secretary, in making appointments, to take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

Section 205(b)(2)(B) will require, in establishing the geographical distribution of mushroom production described in section 205(b)(2)(A), that a whole State shall be considered as a unit, and that such units must be organized into 4 regions that fairly represent the geographic distribution of mushroom production within the United States.

Section 205(b)(2)(C) will require importers of mushrooms to be represented as one region on the Council, and require that such region be separate from the 4 regions established under section 205(b)(2)(B).

Section 205(b)(2)(D) will require the Secretary to appoint to the Council one member from each region that produces or imports, on average, at least 35,000,000 pounds of mushrooms annually.

Section 205(b)(2)(E) will require the Secretary to appoint, subject to the nine-member limit on the number of members on the Council provided in section 205(b)(1), an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region.

Section 205(b)(2)(F) will require that, for the purposes of section 205(b)(2), in determining average annual mushroom production in each of the 4 regions of the United States the Secretary may only consider mushrooms produced by producers covered by title II of the bill, as the term producer is defined in section 203(11).

Section 205(b)(2)(G) will authorize the Secretary, if producers and importers fail to nominate individuals for appointment, to appoint members of the Council on a basis provided for in the order.

Section 205(b)(3)(A) will require the term of appointment to the Council to be for 3 years, except that the initial appointments to

the Council must, to the extent practicable, be proportionately for 1-year, 2-year, and 3-year terms.

Section 205(b)(3)(B) will require Council members to serve without compensation except for the requirement that the Council reimburse Council members for their expenses incurred in performing their duties as members of the Council.

Section 205(c) will require the order to define the powers and duties of the Council, which must include the power and duty—

(1) to administer the order in accordance with its terms and provisions;

(2) to make rules and regulations [2] to effectuate the terms and provisions of the order;

(3) to appoint members of the Council to serve on an executive committee;

(4) to propose, receive, evaluate, approve asnd submit to the Secretary for approval (as provided in section 205(d)) budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, as well as to contract and enter into agreements with appropriate persons to implement such plans or projects;

(5) to develop and propose to the Secretary voluntary quality and grade standards for mushrooms;

(6) to receive, investigate, and report to the Secretary complaints of violations of the order;

(7) to recommend to the Secretary amendments to the order; and

(8) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this title only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States,

except that income from any such invested funds may only be used for any purpose for which the invested funds (funds raised through assessments authorized under section 205(g)) may be used.

The Committee intends that, in the issuance and oversight of the order authorized under title II of the bill, the Secretary will provide appropriate safeguards to ensure that the funds invested by the Board as authorized under section 205(c)(8) will be invested only in safe and sound investment accounts, certificates, obligations, or other instruments, as determined appropriate by the Secretary. In order to ensure the safe and sound investment of such funds, the Secretary may require that such investments be fully in-

[2] The term "rules and regulations" used in this sense is not intended to mean a "rule" or "regulation" in the sense of a federal agency "rule" or "regulation". The Board's rules and regulations would not have the force and effect of law.

sured or guaranteed as to principal or interest by the appropriate local, state, or Federal agency, or such other entity as the Secretary determines appropriate, consistent with section 205(c)(8).

Section 205(d)(1) will require the order to stipulate that the Council must submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

Section 205(d)(2) will require the order to stipulate that the Council must submit to the Secretary for approval budgets on a fiscal year basis of the Council's anticipated expenses and disbursements in the implementation of the order, including projected costs of promotion, research, consumer information, and industry information plans and projects.

Section 205(d)(3) will prohibit the implementation of any plan or project of promotion, research, consumer information, or industry information, or budget, prior to its approval by the Secretary.

Section 205(e)(1) will require the order, in order to ensure the efficient use of funds, to provide that the Council may enter into contracts or agreements for the implementation and carrying out of plans or projects of mushroom promotion, research, consumer information, or industry information, including contracts with producer organizations, and for the payment of the costs of such plans or projects with funds received by the Council under the order.

Section 205(e)(2) will require any contract or agreement described under section 205(e)(1) to provide that—

(A) the contracting party must develop and submit to the Council a plan or project together with a budget or budgets that show estimated costs to be incurred for such plan or project;

(B) the plan or project will become effective on the approval of the Secretary; and

(C) the contracting party will be required to keep accurate records of all of its transactions, account for funds received and expended, make periodic reports ot the Council of activities conducted, and make such other reports as the Council or the Secretary may require.

Section 205(e)(3) will require the order to provide that the Council may contract with producer organizations for any other services. Any such contract shall include provisions comparable to those provided in sections 205(e)(2)(A), (B), and (C).

Section 205(f)(1) will provide that the order must require the Council to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Council.

Section 205(f)(2) will require the Council to (A) cause its books and records to be audited by an independent auditor at the end of each fiscal year, and (B) to submit a report of such audit to the Secretary.

Section 205(g)(1)(A) will require the order to stipulate that each first handler of mushroms for the domestic fresh market produced in the United States must collect, in the manner prescribed by the order, assessments from producers and remit the assessments to the Council.

Section 205(g)(1)(B) will require the order to stipulate that each importer of mushrooms for the domestic fresh market must pay assessments to the Council in the manner prescribed by the order.

Section 205(g)(1)(C) will require any person marketing mushrooms of that person's own production directly to consumers to remit the assessments on such mushrooms directly to the Council in the manner prescribed in the order.

Section 205(g)(2) will (A) require the rate of assessments under the order to be determined and announced by the Council, (B) authorize the Council to change the rate of assessments, within the limitations provided in such section, at any time without a referendum on such changes, and (C) require that the order provide that the rate of assessement—

(i) for the first year of the order, may not exceed one-quarter cent per pound of mushrooms;

(ii) for the second year of the order, may not exceed one-third cent per pound of mushrooms;

(iii) for the third year of the order, may not exceed one-half cent per pound of mushrooms; and

(iv) for the following years of the order, may not exceed one cent per pound of mushrooms.

Section 205(g)(3) will require the order to stipulate that the assessments will be used for payment of the expenses in implementing and administering title II of the bill, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering title II, except for the salaries of Government employees incurred in conducting referenda pursuant to title II.

Section 205(g)(4) will prohibit the collection of any assessment on mushrooms that a first handler certifies will be exported as mushrooms.

Section 205(h) will require the order to prohibit any funds received by the Council under the order from being used in any manner for the purpose of influencing legislation or government action or policy, except that such funds may be used by the Council for the development and recommendation to the Secretary of amendments to the order as prescribed in this title and for the submission to the Secretary of recommended voluntary grade and quality standards for mushrooms under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

Section 205(i)(1) will require the order to stipulate that each first handler and importer of mushrooms (A) maintain, and make available for inspection, such books and records as may be required by the order, and (B) file reports at the time, in the manner, and having the content prescribed by the order.

Section 205(i)(2) will require that the information described in section 205(i)(1) be made available to the Secretary as is appropriate for the administration or enforcement of title II of the bill, the order, or any regulation issued under title II.

Section 205(i)(3)(A) will require all of the information obtained under paragraph (1) to be kept confidential by all officers and employees of the Department and the Council, and agents of the Council, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

Section 205(i)(3)(B) will prohibit anything in section 205(i)(3) from being construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by such person.

Section 205(i)(4)(A) will provide that, except as provided in section 208, information obtained under title II of the bill may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if such activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

Section 205(i)(4)(B) will require any person who knowingly violates section 205(i), on conviction, to be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both. Section 205(i)(4)(B) will also require the removal from office of such person, if such person is an officer or employee of the Council or the Department.

Section 205(i)(5) will prohibit anything in title II of the bill from being construed to authorize the withholding of information from Congress.

Section 205(j) will require the order to also contain such terms and conditions, not inconsistent with title II of the bill, as are necessary to effectuate this title. Such terms and conditions must include provisions for the imposition of a penalty for each late payment of assessments provided for under section 205(g).

Section 206—Referenda

Section 206(a)(1) will require the Secretary, within the 60-day period immediately preceding the effective date of an order issued under section 204(b), to conduct an initial referendum among mushroom producers and importers to ascertain whether the order shall go into effect.

Section 206(a)(2) will require the order to become effective, as provided in section 204(b), if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

Section 206(b)(1)(A) will require the Secretary, effective 5 years after the date on which an order becomes effective under section 204(b), to conduct a referendum among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the order.

Section 206(b)(1)(B) will authorize the Secretary, effective beginning 3 years after the date on which an order becomes effective under section 204(b), on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, to conduct a referendum to ascertain whether producers and importers favor termination or suspension of the order.

Section 206(b)(2) will provide that if, as a result of any referendum conducted under section 206(b)(1), the Secretary determines that suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annuall produced and imported by all those voting in the referendum, then the Secretary will be required to—

(A) within 6 months after making such determination, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

Section 206(c) will require referenda conducted pursuant to section 206 to be conducted in such a manner as is determined by the Secretary.

Section 207—Petition and review

Section 207(a)(1) will permit a person subject to an order issued under title II of the bill to file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

Section 207(a)(2) will require that the person submitting a petition under section 207(a)(1) be given the opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

Section 207(a)(3) will require the Secretary, after the conduct of the hearing required under section 207(a)(2), to make a ruling on the petition, and require that such ruling will be considered to be final if in accordance with law.

Section 207(b)(1) will vest the district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business with jurisdiction to review the ruling of the Secretary on such persons' petition (as provided under section 207(a)(3)), if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling.

Section 207(b)(2) will require service of process in such proceedings to be conducted in accordance with the Federal Rules of Civil Procedure.

Section 207(b)(3) will require the court, if it determines that the ruling of the Secretary under section 207(a)(3) is not in accordance with law, to remand the matter to the Secretary with directions either—

(A) to make such ruling as the court determines to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

Section 207(b)(4) will prohibit the pendency of proceedings instituted under section 207(a) from impeding, hindering, or delaying the Attorney General or the Secretary from obtaining relief by taking any enforcement action pursuant to section 208 of the bill.

Section 208—Enforcement

Section 208(a) will vest the several district courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under title II of the bill.

Section 208(b) will require that a civil action to be brought under section 208 must be referred to the Attorney General for appropriate action, except that the Secretary will not be required to refer to the Attorney General a violation of title II, or any order, rule, or regulation issued under title II, if the Secretary believes that the administration and enforcement of title II would be adequately served by administrative action under section 208(c) or by providing a suitable written notice or warning to the person who committed or is committing the violation.

Section 208(c)(1) will authorize the Secretary to assess, for each violation, a civil penalty of not less than $500 nor more than $5,000 against a person who willfully violates a provision of any order or regulation issued by the Secretary under title II of the bill, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under such order or regulation. Section 208(c)(1) will also require that each violation is a separate offense.

Section 208(c)(2) will authorize the Secretary, in addition to or in lieu of the civil penalty authorized under section 208(c)(1), to issue an order requiring such person to cease and desist from continuing such violation.

Section 208(c)(3) will prohibit any penalty from being assessed or any cease and desist order from being issued by the Secretary under section 110(c) unless the Secretary gives the person against whom the order is issued or the penalty is assessed notice and opportunity for a hearing before the Secretary with respect to such violation.

Section 208(c)(4) will require that the order of the Secretary imposing a cease and desist order or assessing a penalty will be final and conclusive unless the person against whom the order is issued or the penalty is assessed files an appeal with the appropriate district court of the United States in accordance with section 208(d).

Section 208(d)(1) will provide that a person against whom a violation is found and a civil penalty assessed or cease and desist order issued under section 208(c) may obtain judicial review of the penalty if such person—

(A) files, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in the district court of the United States for the district in which such person resides or does business, or in the United States district court for the District of Columbia;

(B) simultaneously sends a copy of the notice by certified mail to the Secretary.

Section 208(d)(2) will require the Secretary to promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

Section 208(d)(3) will provide that a finding of the Secretary under section 208 may be set aside only if the finding is found to be unsupported by substantial evidence.

Section 208(e) will provide that any person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, will be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in sections 208(c) and (d), of not more than $500 for each offense. Each day during which the failure to obey the cease and desist order continues must be considered as a separate violation of such order.

Section 208(f) will provide that if a person fails to pay an assessment of a civil penalty after it has become final and unappealable, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any district court in which the person resides or conducts business. In such action, the validity and appropriateness of such civil penalty will not be subject to review.

Section 209—Investigations and power to subpoena

Section 209(a) will authorize the Secretary to make such investigations as the Secretary considers necessary (1) for the effective administration of title II of the bill, or (2) to determine whether any person subject to title II has engaged or is engaging in any act that constitutes a violation of title II or of any order, rule, or regulation issued under title II.

Section 209(b)(1) will authorize the Secretary, for the purpose of an investigation made under section 209(a), to administer oaths and affirmations and issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

Section 209(b)(2) will authorize the presiding officer of an administrative hearing held under section 207 or section 208 to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

Section 209(c) will authorize the Secretary, in case of contumacy by, or refusal to obey a subpoena issued to, any person, to invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such

person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). Section 209(c) will also authorize the court to issue an order requiring such person to comply with such a subpoena.

Section 209(d) will permit a court issuing an order under section 209(c) to punish any failure to obey such order of the court as a contempt thereof.

Section 209(e) will provide that the service of process in any case under section 209 may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

Section 209(f) will require any hearings held under section 209 to be held within the judicial district where such person resides or has a principal place of business.

Section 210—Savings provision

Section 210 will prohibit anything in title II of the bill from being construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

Section 211—Suspension or termination of orders

The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or provision. The termination or suspension of any order, or any provision thereof, shall not be considered an order under the meaning of this title.

Section 212—Authorization of appropriations

Section 212(a) will authorize to be appropriated for each fiscal year such sums as are necessary to carry out the provisions of title II of the bill.

Section 212(b) will prohibit the use of funds appropriated to carry out title II of the bill for the payment of the expenses or expenditures of the Council in administering any provision of an order issued under title II.

Section 213—Regulations

Section 213 will authorize the Secretary to issue such regulations as are necessary to carry out the provisions of title II of the bill.

TITLE III—POTATOES

Section 301—Short title

Section 301 will provide that title III of the bill may be cited as the "Potato Research and Promotion Act Amendments of 1990".

Section 302—Findings and declaration of policy

Section 302 of the bill will amend the findings and declaration of policy in section 302 of the Potato Research and Promotion Act (7 U.S.C. 2611, et seq.; hereinafter referred to as the "Act") to—

(1) make the findings of the Act applicable to potatoes produced in foreign countries and imported into the United States, as well as to domestically produced potatoes;

(2) strike obsolete provisions of such findings; and

(3) include in the declaration of policy of the Act language clarifying that the program authorized under the Act may be carried out to maintain and expand domestic and foreign markets for potato products, as well as potatoes.

Section 303—Definitions

Section 303 of the bill will amend section 303 of the Act to—

(1) provide that the definition of "potatoes" under the Act will include all varieties of Irish potatoes grown by producers in the fifty States as well as those grown in foreign countries and imported into the United States (current includes only such potatoes grown in the "48 contiguous States" in such definition); and

(2) define the term "importer" as used in the Act to mean any person who imports tablestock, frozen, or processed potatoes for ultimate consumption by humans, or seed potatoes, into the United States.

Section 304—Authority to issue a plan

Section 304 of the bill will amend section 304 of the Act to provide that any order (or plan, as such orders are referred to in the remainder of the Act) the Secretary of Agriculture (hereafter referred to as the "Secretary") is required to issue under section 304 of the Act will—

(1) apply to importers of potatoes as well as handlers;

(2) require that assessments will be collected under the plan on potatoes imported into the United States as well as those domestically produced potatoes handled in the United States; and

(3) apply to potatoes produced in the 50 States of the United States, rather than the 48 contiguous States, as provided in the Act; and

(4) apply to potatoes produced in foreign countries and imported into the United States, if importers are subject to such a plan.

Section 305—Notice and hearings

Section 305 of the bill will amend section 305 of the Act to require the Secretary to give due notice and opportunity for hearing upon a proposed plan when sufficient evidence is presented by "interested persons" (as opposed to by "potato producers", as provided in current law) that a proposed plan will effectuate the declared policy of the Act.

Section 306—Required terms in plans

Section 306(a)(1) of the bill will amend section 308(b) of the Act to—

(A) require that, if importers are subject to a plan under the Act, then the National Potato Promotion Board (hereinafter referred to as the "board") will also include up to 5 representa-

tives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary;

(B) authorize the Secretary to appoint importer representatives to the board on the basis of representation, as provided for in the plan, if importers fail to select nominees for appointment to the board; and

(C) provide that the requirement for the inclusion of public representatives on the board not be subject to importer approval.

Section 306(a)(2) will amend section 308(e) of the Act to—

(A) increase from one cent to 2 cents per one hundred pounds of potatoes handled the maximum allowable rate of assessment under a plan; and

(B) to provide that, upon the approval of producers and importers when importers are subject to a plan (rather than producers only as in current law), the maximum allowable rate of assessment may be up to one-half of one percent of the immediate past ten calendar-year United States average price received for potatoes by growers.

Section 306(a)(3) will amend section 308(f)(1) of the Act to require that the reimbursement of referendum and administrative costs to the Department of Agriculture by the board not be subject to approval importers, if importers are subject to a plan. Current law provides that the reimbursement of such costs not be subject to approval by producers, only.

Section 306(a)(4) will strike section 308(g) of the Act, which requires that any plan issued under the Act afford potato producers the right to demand and receive from the board a refund of assessments paid under the Act, thus making mandatory the payment of assessments under the Act unless a refund provision is approved as a permissive term in the plan, as provided in the new section 309(g) of the Act.

Section 307—Permissive terms in plans

Section 307 of the bill will amend section 309 of Act to add two new subsections.

The new section 309(g) of the Act will include in the terms that may be included in a plan under the Act a provision to afford any potato producer or importer against whose potatoes any assessment is made and collected under authority of title III of the bill, and who is not in favor of supporting the research and promotion program, the right to demand and receive from the board a refund of such assessment. The producer or importer would be required to make such demand for a refund (1) personally, (2) in accordance with regulations, (3) on a form, (4) within a time period prescribed by the board and approved by the Secretary (but in no event less than 90 days after the collection of such assessment), and (5) upon submission of proof satisfactory to the board that the producer or importer paid the assessment for which refund is sought. It would be required that any such refund be made within 60 days after demand therefor.

The new section 309(h) of the Act will include in the terms that may be included in a plan under the Act a provision to authorize

the assessment of imports of tablestock, frozen, or processed potatoes for ultimate consumption by humans and seed potatoes into the United States.

Section 308—Assessments

Section 308 will amend section 310 of the Act to require the payment of assessments under the Act by importers, as well as handlers, as in current law.

Section 308(1) will add a new section 10(a)(2) to the Act that will require (A) each importer designated by the board to be responsible for payment to the board, as it may direct, of any assessment levied on potatoes, (B) the assessment on imported tablestock, frozen, or processed potatoes for ultimate consumption by humans, and seed potatoes to be established by the board so that the effective assessment equals that on domestic production, (C) the assessment to be paid by the importer to the board at the time of entry into the United States, (D) each such importer to maintain a separate record including the total quantity of table stock, frozen, processed potatoes for ultimate consumption by humans, and seed potatoes imported into the United States that are included under the terms of the plan as well as those that are exempt under such plan, and indicate such other information as may be prescribed by the board, and (E) that no more than one assessment may be made on any imported potatoes.

Section 308(2) will amend section 310(b) of the Act to require importers to maintain and make available for inspection by the Secretary such books and records as required by the plan.

Section 308(3) will amend section 310(c)(1) of the Act to provide that nothing in section 310(c) of the Act may be deemed to prohibit the issuance of general statements based upon the reports of a number of importers (as well as handlers, as under current law) if such statements do not identify the information furnished by any person.

Section 309—Investigation and power to subpoena

Section 309 will amend section 313 of the Act to clarify that the Secretary may make such investigations as the Secretary deems necessary to determine whether any person has engaged or is engaging in any acts or practices which violate the Act.

Section 310—Requirement of referendum

Section 310(1) of the bill will amend section 314(a) of the Act to require the Secretary, when the issuance of a plan would subject importers to the terms and conditions of a plan, to also conduct the referendum among importers, who during a representative period determined by the Secretary have been engaged in the importation of potatoes, for the purpose of ascertaining whether the issuance of such plan is approved or favored by such importers.

Section 310(2) of the bill will amend section 314(b) of the Act to provide that the required margin for approval in a referendum under the Act to be a majority of the producers voting in such referendum, or a majority of the producers and importers voting in such referendum, when the issuance of a plan would subject im-

porters to the terms and conditions of a plan. Under current law the margin of approval for approval of a referendum is—

(1) not less than two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the potatoes produced during the representative period by producers voting in such referendum; and

(2) not less than a majority of the producers voting in such referendum.

Section 310(3) of the bill will amend section 314(c) of the Act to provide that the failure of importers (as well as producers, as under current law) to approve an amendment to any plan issued under the Act may not be deemed to invalidate such plan.

Section 310(4) of the bill will amend section 314(d) of the Act to require that the ballots and other information or reports which reveal or tend to reveal the vote of any importer or the volume of potatoes imported by such importer be held strictly confidential.

Section 311—Suspension or termination of plans

Section 311(1) of the bill will amend section 315(b) of the Act to require the Secretary to hold a referendum on the request of 10 percent or more of potato producers and importers, when importers are subject to the plan, and to make other conforming changes.

Section 311(2) of the bill will add a new section 315(c) to the Act to clarify that the termination or suspension of any plan, or any provision thereof, may not be considered to be the issuance of a plan within the meaning of the Act.

Section 312—Amendment procedure

Section 312(a) will require, notwithstanding any provision of the Act, the procedure specified in section 312 to apply if a producer or a producer organization requests the Secretary to amend the plan in effect under that Act to—

(1) subject importers to the terms and conditions of a plan, and

(2) eliminate provisions for refunds of assessments for those not in favor of supporting the research and promotion program provided under the Act.

The procedure under this section shall apply only in the case of the first such request received after the date of enactment of title III of the bill.

Section 312(b) will require the Secretary to publish for public comment such proposed amendments to the plan within 60 days after the receipt of a request under section 312(a).

Section 312(c) will require the Secretary, not later than 150 days after publication of such amendment, and after notice and opportunity for public comment, to issue the amendments to the plan, as described in section 312(a), if the Secretary has reason to believe that the amendments will tend to effectuate the declared policy of title III of the bill.

Section 312(d) will require the Secretary, not later than 24 months after the date of issuance of such amendments to the plan, to conduct a referendum among producers and importers who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes. The

amendments to the plan may be continued only if the Secretary determines that the amendments have been approved by a majority of the total number of producers and importers voting in the referendum.

Section 312(e) will require the board to—

(1) establish an escrow account to be used for assessment refunds, and place funds in such account in accordance with section 312(e)(2) during the period beginning on the effective date of the amendments to the plan issued under section 312(c) and ending on the date of the referendum on the amendments to the plan;

(2) place in the account established under section 312(e)(1), from assessments collected under the plan during the period referred to in such section, an amount equal to 10 percent of the assessments collected during such period;

(3) require that, subject to sections 312(e)(4), (5), and (6), for the period referred to in section 312(e)(1) any producer or importer have the right to demand and receive from the board a one-time refund of assessments collected from such producer or importer during such period if—

(A) such producer or importer is responsible for paying such assessments;

(B) such producer or importer does not support the program established under the plan; and

(C) the amendments to the plan to eliminate provisions for refunds of assessments are not approved pursuant to a referendum conducted under section 312(d);

(4) require such demand for a refund to be made in accordance with regulations, on a form, and within a time period prescribed by the board;

(5) require such refund to be made on submission of proof satisfactory to the board that such producer or importer paid the assessment for which refund is demanded; and

(6) prorate the amount of such refunds among all eligible producers and importers who demand such refund, if the amount in the escrow account required to be established by section 312(e)(1) is not sufficient to refund the total amount of assessments demanded by all eligible producers and importers under this subsection.

Section 312(f) of the bill will require—

(1) the Secretary to terminate the amendments; and

(2) the plan to continue in effect without the amendments, if such amendments to the plan are not approved pursuant to section 312(d).

Section 312(g) of the bill will require the Secretary, notwithstanding any provision of the Act, upon request of a producer or a producer organization, to issue an amendment to the plan to include the 50 States of the United States, and that such amendment not be subject to a referendum.

TITLE IV—LIMES

Section 401—Short title

Section 401 of the bill will provide that title IV of the bill may be cited as the "Lime Research, Promotion, and Consumer Information Act of 1990".

Section 402—Findings, purposes, and limitations

Section 402(a) will set forth congressional findings that—

(1) domestically produced limes are grown by many individual producers;

(2) virtually all domestically produced limes are grown in the States of Florida and California;

(3) limes move in interstate and foreign commerce, and limes that do not move in such channels of commerce directly burden or affect interstate commerce in limes;

(4) in recent years, large quantities of limes have been imported into the United States;

(5) the maintenance and expansion of existing domestic and foreign markets for limes and the development of additional and improved markets for limes are vital to the welfare of lime producers and other persons concerned with producing, marketing, or processing limes;

(6) a coordinated program of research, promotion, and consumer information regarding limes is necessary for the maintenance and development of such markets; and

(7) lime producers, lime producer-handlers, lime handlers, and lime importers are unable to implement and finance such a program without cooperative action.

Section 402(b) of the bill will provide that the purposes of title IV of the bill are—

(1) to authorize the establishment of an orderly procedure for the development and financing (through an adequate assessment) of an effective and coordinated program of research, promotion, and consumer information regarding limes designed—

(A) to strengthen the position of the lime industry in domestic and foreign markets, and

(B) to maintain, develop, and expand markets for limes; and

(2) to treat domestically and imported limes equitably.

Section 402(c) will prohibit anything in title IV of the bill from being construed to require quality standards for limes, control the production of limes, or otherwise limit the right of individual producers to produce limes.

Section 403—Definitions

Section 403 will provide definitions for the following terms, for the purposes of title IV of the bill:

(1) BOARD.—The term "Board" means the Lime Board provided for under section 405(b).

(2) CONSUMER INFORMATION.—The term "consumer information" means any action taken to provide information to, and broaden the understanding of, the general public regarding the use, nutritional attributes, and care of limes.

(3) HANDLE.—The term "handle" means to sell, purchase, or package limes.

(4) HANDLER.—The term "handler" means any person in the business of handling limes.

(5) IMPORTER.—The term "importer" means any person who imports limes into the United States.

(6) LIME.—The term "lime" means the fruit of a citrus aurantifolia tree for the fresh market.

(7) MARKETING.—The term "marketing" means the sale or other disposition of limes in commerce.

(8) ORDER.—The term "order" means a lime research, promotion, and consumer information order issued by the Secretary under section 404(a).

(9) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

(10) PRODUCER.—The term "producer" means any person who produces limes in the United States for sale in commerce.

(11) PRODUCER-HANDLER.—The term "producer-handler" means any person who is both a producer and handler of limes.

(12) PROMOTION.—The term "promotion" means any action taken under title IV of the bill (including paid advertising) to present a favorable image for limes to the general public with the express intent of improving the competitive position of limes and stimulating the sale of limes.

(13) RESEARCH.—The term "research" means any type of research relating to the use and nutritional value of limes and designed to advance the image, desirability, marketability, or quality of limes.

(14) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(15) STATE AND UNITED STATES.—The term "State" and "United States" include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 404—Issuance of orders

Section 404(a) will require—

(1) the Secretary, subject to the provisions of title IV of the bill, and to effectuate the declared purposes of title IV, to issue and, from time to time, amend lime research, promotion, and consumer information orders applicable to handlers, producers, producer-handlers, and importers of limes;

(2) any such order to be national in scope; and

(3) that not more than one order may be in effect under title IV at any one time.

Section 404(b)(1) will provide that any person that will be affected by title IV of the bill may request the issuance of, and submit a proposal for, an order under title IV.

Section 404(b)(2) will require the Secretary, not later than 60 days after the receipt of a request and proposal by an interested person for an order, to publish a proposed order and give due notice and opportunity for public comment on the proposed order.

Section 404(b)(3) will require the Secretary, after notice and opportunity for public comment are given, to issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of title IV.

Section 404(b)(4) will require such order to be issued and become effective not later than 150 days following the publication of the proposed order.

Section 404(c) will authorize the Secretary, from time to time, to amend any order issued under section 404, and require the provisions of title IV of the bill applicable to orders to be applicable to amendments to orders.

Section 405—Required terms in orders

Section 405(a) of the bill will require that an order issued by the Secretary under section 404(a) must contain the terms and conditions described in section 405 and, except as provided in section 406, no other terms or conditions.

Section 405(b) will require an order issued by the Secretary under section 404(a) to provide for the establishment of a Lime Board as follows:

(1) MEMBERSHIP.—The Board must be composed of—

(A) 7 members who are producers and who are not exempt from an assessment under section 405(d)(5)(A);

(B) 3 members who are importers and who are not exempt from an assessment under section 405(d)(5)(A); and

(C) one member appointed from the general public.

(2) APPOINTMENT AND NOMINATION.—

(A) APPOINTMENT.—The Secretary will be required to appoint the members of the Board.

(B) PRODUCERS.—The 7 members who are producers will be required to be appointed from individuals nominated by lime producers.

(C) IMPORTERS.—The 3 members who are importers will be required to be appointed from individuals nominated by lime importers.

(D) PUBLIC.—The public representative will be required to be appointed from nominations of the Board.

(E) FAILURE TO NOMINATE.—If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order. If the Board fails to nominate a public representative, such member may be appointed by the Secretary without a nomination.

(F) INITIAL BOARD.—The Secretary will be required to establish an initial Board from among nominations solicited by the Secretary. For the purpose of obtaining nominations for the members of the initial Board described in section 405(b)(1), the Secretary will be required to perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate.

Section 405(b)(3) will require the Secretary to appoint an alternated for each member of the Board, and require that each alternate—

(A) be appointed in the same manner as the member for whom such individual is an alternate; and

(B) serve on the Board if such member is absent from a meeting or is disqualified under section 405(b)(5). Section 405(b)(4) will require that members of the Board be appointed for a term of 3 years, and require further that of the members first appointed—

(A) 3 members must be appointed for a term of 1 year;

(B) 4 members must be appointed for a term of 2 years; and

(C) 4 members must be appointed for a term of 3 years;

as designated by the Secretary at the time of appointment.

Section 405(b)(5) will require a member or alternate to be disqualified from serving on the the Board if such member or alternate was appointed as a producer, importer, or public representative and cesases to belong to the group for which such member was appointed.

Section 405(b)(6) will require that members and alternates of the Board serve without pay.

Section 405(b)(7) will require that, while away from their homes or regular places of business in the performance of duties for the Board, members and alterantes be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed travel expenses under section 5703 of title 5, United States Code.

Section 405(b)(8) will require the Board to—

(A) administer orders issued by the Secretary under section 404(a), and amendments to such orders, in accordance with their terms and provisions and consistent with this title;

(B) prescribe rules and regulations [3] to effectuate the terms and provisions of such orders;

(C) receive, investigate, and report to the Secretary account of violations of such orders;

(D) make recommendations to the Secretary with respect to amendments that should be made to such orders; and

(E) employ a manager and staff.

Section 405(c) will require an order under section 404(a) to provide for periodic budgets and plans.

Section 405(c)(1) will require the Board to prepare and submit to the Secretary a budget (on a fiscal period basis determined by the Secretary) of the anticipated expenses and disbursements of the Board in the administration of the order, including probable costs of research, promotion, and consumer information, and require that such budget take effect on the approval of the Secretary.

Section 405(c)(2) will require each budget to include a plan for research, promotion, and consumer information regarding limes, and require that such plan take effect on the approval of the Secretary. The Board may enter into contracts and agreements, with the approval of the Secretary, for—

[3] The term "rules and regulations" used in this sense is not intended to mean a "rule" or "regulation" in the sense of a federal agency "rule" or "regulation". The Board's rules and regulations would not have the force and effect of law.

(A) the development and carrying out of such plan; and

(B) the payment of the cost of such plan with funds collected pursuant to title IV of the bill.

Section 405(d) will require an order under section 404(a) to provide for the imposition and collection of assessments with regard to the production and importation of limes.

Section 405(d)(1) will provide that the assessment rate may not exceed one cent per pound of limes.

Section 405(d)(2) will requires first handlers of limes, except as provided in section 405(d)(4), to—

(A) be responsible for the collection from the producer, and payment to the Board, of assessments under this subsection; and

(B) maintain a separate record of the limes of each producer whose limes as so handled, including the limes owned by the handler.

Section 405(d)(3) will require, for the purposes of the collection and payment of assessments and the keeping of records under section 405(d)(2), a producer-handler shall be considered the first handler of limes producer by such producer-handler.

Section 405(d)(4) will require the assessment on imported limes to be—

(A) paid by the importer at the time of entry into the United States; and

(B) remitted to the Board.

Section 405(d)(5) will provide for the following persons to be exempt from an assessment under this subsection—

(A) a producer who produces less than 35,000 pounds of limes per year;

(B) a producer-handler who produces and handles less than 35,000 pounds of lines per year; and

(C) an importer who imports less than 35,000 pounds of limes per year.

Section 405(d)(6) require, in order to claim an exemption under section 405(d)(5) for a particular year, person to submit an application to the Board—

(A) stating the basis for such exemption; and

(B) certifying that such person all will not exceed the limitation required for such exemption in such year.

Section 405(e)(1) will require an order to provide that funds paid to the Board as assessments under section 405(d)—

(A) may be used by the Board to—

(i) pay for research, promotion, and consumer information described in the budget of the Board under section 405(c) and for other expenses incurred by the Board in the administration of an order;

(ii) pay such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary; and

(B) shall be used to pay the expenses incurred by the Secretary, including the salaries and expenses of government employees implementing and administering the order, except as provided in section 405(e)(2).

Section 405(e)(2) will require and order issued under section 405(a) to require the Board to reimburse the Secretary, from assessments collected under section 405(d), for any expenses incurred by the Secretary in conducting referenda under title IV of the bill, except for the salaries of Government employees.

Section 405(f) will require and order to provide that may promotion funded with assessments collected under section 405(d) may not make—

(1) any false or unwarranted claims on behalf of limes; and

(2) any false or unwarranted statements with respect to the attributes or uses of any product that competes with limes for sale in commerce.

Section 405(g) will requier an order issued under section 404(a) to provide that funds collected by the Board under title IV through assessments authorized by this title may not, in any mannmer, be use for the purpose of influlencing legislation or governmental policy or action, exception for making recommendations to the Secretary as provided for the title IV.

Section 405(h)(1) will require an order issued under section 404(a) to require the Board—

(A) to maintain books and records with respect to the receipt and disbursement of funds received by the Board;

(B) to submit to the Secretary from time to time such reports as the Secretary may require for appropriate accounting; and

(C) to submit to the Secretary at the end of each fiscal year a complete audit report regarding the activities of the Board during such fiscal year.

Section 405(h)(2) will require an order, so that information and data will be available to the Board and the Secretary that is appropriate or necessary for the effectuation, administration, or enforcement of title IV of the bill (or any order or regulation issued under title IV), to require handlers, producer-handlers, and importers who are responsible for the collection, payment, or remittance of assessments under section 405(d)—

(A) to maintain and make available for inspection by the employees of the Board and the Secretary such books and records as may be required by the order; and

(B) to file, at the times, in the manner, and having the content prescribed by the order, reports regarding the collection, payment, or remittance of such assessments.

Section 405(i)(1) will require an order to stipulate that all information obtained pursuant to section 405(h)(2) must be kept confidential by all officers and employees of the Department and of the Board. Only such information as the Secretary considers relevant shall be disclosed to the public and only in a suit or administrative hearing, brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, involving the order with respect to which the information was furnished or acquired.

Section 405(i)(2) will provide that nothing in section 405 will prohibit—

(A) the issuance of general statements based on the reports of a number of handlers, producer-handlers, and importers sub-

ject to an order, if the statements do not identify the information furnished by any person; or

(B) the publication, by direction of the Secretary, of the name of any person violating an order issued under section 404(a), together with a statement of the particular provisions of the order violated by such person.

Section 405(j) will provide that nothing in title IV of the bill may be construed to authorize the withholding of information from Congress.

Section 406—Permissive terms in orders

Section 406 will provide that, on the recommendation of the Board and with approval of the Secretary, an order issued under section 404(a) may—

(1) provide authority to the Board to exempt from such order limes exported from the United States, subject to such safeguards as the Board may establish to ensure proper use of the exemption;

(2) provide authority to the Board to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures;

(3) provide that the Board may convene from time to time working groups drawn from producers, handlers, producer-handlers, importers, exporters, or the general public to assist in the development of research and marketing programs for limes;

(4) provide authority to the Board to accumulate reserve funds from assessments collected pursuant to section 405(d) to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years in which production and assessment income may be reduced, except that any reserve fund so established may not exceed the amount budgeted for operation of this title for 1 year;

(5) provide authority to the Board to use, with the approval of the Secretary, funds collected under section 405(d) for the development and expansion of lime sales in foreign markets; and

(6) provide for terms and conditions—

(A) incidental to, and not inconsistent with, the terms and conditions specified in title IV of the bill; and

(B) necessary to effectuate the other provisions of such order.

Section 407—Petition and review

Section 407(a)(1) will provide that a person subject to an order may file with the Secretary a petition—

(A) stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

Section 407(a)(2) will require that a person submitting a petition under section 407(a)(1) be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

Section 407(a)(3) will require the Secretary, after the hearing, to make a ruling on the petition, and require that the Secretary's ruling will be final if in accordance with law.

Section 407(b)(1) will vest the district courts of the United States, in any district in which such person who is a petitioner under section 407(a) resides or carries on business with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under section 407(a).

Section 407(b)(2) will require service of process in proceedings under section 407(b) to be conducted in accordance with the Federal Rules of Civil Procedure.

Section 407(b)(3) will require the court, if it determines that the ruling of the Secretary under section 407(a)(3) is not in accordance with law, to remand the matter to the Secretary with directions either—

(A) to make such ruling as the court determines to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

Section 407(b)(4) will prohibit the pendency of proceedings instituted pursuant to section 407(a) from impeding, hindering, or delaying the Attorney General or the Secretary from obtaining relief pursuant to section 408.

Section 408—Enforcement

Section 408(a) will vest the district courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under title IV of the bill.

Section 408(b) will require that a civil action authorized to be brought under section 408 to be referred to the Attorney General for appropriate action, except that the Secretary will not be required to refer to the Attorney General a violation of title IV, or any order or regulation issued under title IV, if the Secretary believes that the administration and enforcement of such title would be adequately served by administrative action under section 408(c) or suitable written notice or warning to any person committing the violation.

Section 408(c)(1) will authorize the Secretary to assess, for each violation, a civil penalty of not less than $500 nor more than $5,000 against a person who willfully violates any provision of any order or regulation issued by the Secretary under title IV of the bill, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation. Section 408(c)(1) will also require that each such violation be a separate offense.

Section 408(c)(2) will authorize the Secretary, in addition to or in lieu of the civil penalty authorized under section 408(c)(1), to issue an order requiring such person to cease and desist from continuing such violation.

Section 408(c)(3) will prohibit any order assessing a penalty or cease and desist order from being issued by the Secretary under section 408(c) unless the Secretary give the person against whom

the order is issued notice and opportunity for a hearing on the record before the Secretary with respect to such violation.

Section 408(c)(4) will require that the order of the Secretary assessing a penalty or imposing a cease and desist order will be final and conclusive unless the person against whom the order is issued files an appeal from such order with the appropriate district court of the United States, in accordance with section 408(d).

Section 408(d)(1) will provide that a person against whom a violation is found and a civil penalty assessed or cease and desist order issued under section 408(c) may obtain review of the penalty or order in the district court of the United States for the district in which such person resides or does business, or the United States district court for the District of Columbia, if such person—

(A) files a notice of appeal in such court not later than 30 days after the date of such order; and

(B) simultaneously sends a copy of the notice by certified mail to the Secretary.

Section 408(d)(2) will require the Secretary to promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

Section 408(d)(3) will provide that a finding of the Secretary under section 408 may be set aside only if the finding is found to be unsupported by substantial evidence.

Section 408(e) will provide that any person who fails to obey a cease and desist order issued by the Secretary after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, will be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in sections 408 (c) and (d), of not more than $500 for each offense. Each day during which such failure continues must be considered a separate violation of such order.

Section 408(f) will provide that if a person fails to pay an assessment of a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary will be required to refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of the final order imposing such civil penalty will not be subject to review.

Section 409—Investigations and power to subpoena

Section 409(a) will authorize the Secretary to make such investigations as the Secretary considers necessary—

(1) for the effective carrying out of the responsibilities of the Secretary under title IV of the bill; or

(2) to determine whether a person subject to the provisions of title IV has engaged or is engaging in any act that constitutes a violation of any provision of title IV, or any order, rule, or regulation issued under title IV.

Section 409(b)(1) will authorize the Secretary, for the purpose of an investigation made under section 409(a), to administer oaths and

affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production on any such records may be required from any place in the United States.

Section 409(b)(2) will authorize the presiding officer of an administrative hearing held under section 407 or section 408 of the bill, to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

Section 409(c) will authorize the Secretary, in case of contumacy by, or refusal to obey a subpoena to, any person, to invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under section 409(b). Section 409(c) will also authorize the court to issue an order requiring such person to comply with such a subpoena.

Section 409(d) will permit a court issuing an order under section 409(c) to punish any failure to obey such order as a contempt thereof.

Section 409(e) will provide that the service of process in any case under section 409 may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

Section 409(f) will require any hearings under section 409 to be held within the judicial district where such person is an inhabitant or has a principal place of business.

Section 410—Initial referendum

Section 410(a) will require the Secretary, not later than 2 years after the date on which the Secretary first issues an order under section 404(a), to conduct an initial referendum among producers, producer-handlers, and importers who—

(1) are not exempt from assessment under section 405(d)(5); and

(2) produced or imported limes during a representative period as determined by the Secretary.

Section 410(b) will declare that the purpose of the referendum referred to in section 410(a) is to determine whether the issuance of the order is approved or favored by not less than a majority of the producers, producer-handlers, and importers voting in the referendum. Section 410(b) will also require that the order will continue in effect only upon the affirmative vote of such a majority.

Section 410(c) will require that the ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this section, or section 411, to be held strictly confidential and not be disclosed.

Section 410(d)(1) will require that 10 percent of the assessments collected from producers, producer-handler, and importers prior to announcement of the results of the referendum provided for in section 410 to be held in an escrow account until the results of the referendum are published by the Secretary.

Section 410(d)(2) will require the funds in the escrow account to be released to be used for the purposes of title IV of the bill, if the order is approved by a majority of the producers, producer-handlers, and importers voting in the initial referendum under section 410(a).

Section 410(d)(3)(A) will require the Board to prorate the amount of refunds available under section 410 among all eligible producers, producer-handlers, or importers who demand such refund, if—

(i) the amount in the escrow account required by section 410(d)(1) is not sufficient to refund the total amount of assessments demanded by producers, producer-handlers, or importers; and

(ii) the plan is not approved pursuant to the referendum conducted under section 410(a).

Section 410(d)(3)(B) will require that a producer, producer-handler, or importer be eligible to receive a refund—

(i) if demand is made personally, in accordance with regulations and on a form and within a time period prescribed by the Board, but in no event less than 90 days after the date of publication of the results of the referendum; and

(ii) on submission of proof satisfactory to the Board that the person paid the assessment for which refund is sought and did not collect the assessment from another person.

Section 410(d)(3)(C) will require any surplus funds not refunded under section 410(d)(3) to be released to be used to carry out title IV of the bill.

Section 411—Suspension and termination

Section 411(a) will require the Secretary to terminate or suspend the operation of an order issued under section 404(a), or a provision of such order, if the Secretary finds that such order or provision obstructs or does not tend to effectuate the purposes of title IV of the bill.

Section 411(b) will authorize the Secretary to periodically conduct a referendum to determine if lime producers, producer-handlers, and importers favor the continuation, termination, or suspension of any order issued under section 404(a) and in effect at the time of such referendum.

Section 411(c) will require the Secretary to hold a referendum under section 411(b)—

(1) at the request of the Board; or

(2) if not less than 10 percent of the lime producers, producer-handlers, and importers subject to assessment under title IV of the bill submit a petition requesting such a referendum.

Section 411(d) will provide that the termination or suspension of any order, or any provision thereof, may not be considered an order within the meaning of title IV.

Section 411(e) will require the Secretary to suspend or terminate the order at the end of the marketing year if the Secretary determines that—

(1) the suspension or termination of the order is favored by not less than an majority of those persons voting in a referendum under section 411(b); and

(2) the producers, producer-handlers, and importers comprising this majority produce and import more than 50 percent of the volume of limes produced and imported by those voting in the referendum.

Section 412—Authorization of appropriations

Section 412(a) will authorize to the appropriated for each fiscal year such funds as are necessary to carry out title IV of the bill.

Section 412(b) will provide that funds appropriated to carry out title IV of the bill may not be available for payment of the expenses of expenditures of the Board in administering any provisions of an order issued under title IV of the bill.

Section 413—Regulations

Section 413 will authorize the Secretary to issue such regulations as are necessary to carry out title IV of the bill.

TITLE V—COTTON

Section 501—Short title

Section 501 will provide that title V of the bill may be cited as the "Cotton Research and Promotion Act Amendments of 1990".

Section 502—Findings and declaration of policy

Section 502 of the bill will amend section 2 of the Cotton Research and Promotion Act (7 U.S.C. 2101, et seq.; hereinafter referred to as the "Act") to—

(1) make the findings of the Act applicable to cotton grown outside the United States as well as cotton produced in the United States;

(2) strike obsolete provisions of such findings; and

(3) clarify that it is the policy of Congress and the purpose of the Act to authorize and enable the establishment of an orderly procedure for the development, financing through adequate assessments on all cotton marketed in the United States and on imports of cotton (as opposed to only the cotton harvested in the United States, as in current law), and carrying out a program of research and promotion for cotton as described in section 2 of the Act.

Section 503—Required terms in order; cotton imports

Section 503(1) will make technical and conforming amendments to section 7(a)(2) of the Act, consistent with section 503.

Section 503(2) will add a new section 7(b)(2) to the Act to require, when imports of cotton are subject to an order, that—

(A) the Cotton Board established pursuant to section 7(a) of the Act (hereinafter referred to as the "Cotton Board") include an appropriate number of representatives, as determined by the Secretary, of importers of cotton on which assessments are paid under the Act;

(B) such importer representatives be appointed by the Secretary after consultation with organizations representing importers, as determined by the Secretary; and

(C) each cotton-producing State in entitled to at least one representative on the Cotton Board.

Section 503(3) will amend section 7(e) of the Act to require that orders issued pursuant to the Act contain certain enumerated terms and conditions.

The new section 7(e)(1) will require such orders to contain terms and conditions providing that—

(A) the producer or other person for whom the cotton is being handled must pay an assessment prescribed by the order to the handler of such cotton designated by the Cotton Board pursuant to regulations issued under the order;

(B) such handler shall collect such assessment from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay such assessment to the Cotton Board; and

(C) each importer shall pay such assessment to the Cotton Board on imports of cotton,

as such assessment is prescribed by the order, on the basis of bales of cotton handled or imported. Section 7(e)(1) will also require the assessment to cover such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board under the order, during any period specified by the Secretary.

The new section 7(e)(2) will require the order to provide for reimbursing the Secretary—

(A) for expenses, not to exceed $300,000, incurred by the Secretary in connection with any referendum conducted under section 8 of the Act; and

(B) for administrative costs incurred by the Secretary for supervisory work up to 5 employee years after an order or amendment to an order has been issued and made effective.

The new section 7(e)(2) will also require that there be included in the order a provision for reimbursing any agency of the Federal Government that assists in administering the import provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

The new section 7(e)(3) will authorize the Cotton Board, in order to facilitate the collection and payment of assessments under section 7 of the Act, to designate different handlers or importers, of classes of handlers or importers, to recognize differences in marketing practices or procedures utilized in any State or area, with the exception that no more than one such assessment may be made on any bale of cotton, unless specifically authorized by provisions of section 7(e) of the Act.

The new section 7(e)(4) of the Act will require—

(A) the rate of assessment prescribed by the order to be $1 per bale of cotton handled, supplemented by an additional per bale amount not to exceed 1 percent of the value of cotton as determined by the Cotton Board and the Secretary;

(B) the rate of assessment on imports of cotton to be determined in the same manner as the rate of assessment per bale of cotton handled; and

(C) that the value to be placed on cotton imports for the purpose of determining the assessment on such imports be established by the Secretary in a fair and equitable manner.

The new section 7(e)(5) of the Act will prohibit any authority under the Act from being used as a basis to use funds collected under the Act to advertise or solicit votes in any referendum relating to the rate of assessment.

The new section 7(e)(6) will authorize the Secretary to maintain a suit against any person subject to the order for the collection of such assessment, and vest the several district courts of the United States with jurisdiction to entertain such suits regardless of the amount in controversy. Section 7(e)(6) will also clarify that the remedies provided in section 7 of the Act are in addition to, and not exclusive of, the remedies provided for elsewhere in the Act or now or hereafter existing at law or in equity.

The new section 7(e)(7) will require that the provisions of section 7(b) (regarding representation on the Cotton Board) and section 7(e) (regarding assessments) not be applicable to cottonseed and the products derived from cotton and its seed.

The new section 7(e)(8) will provide that the provisions of section 7(e) of the Act relating to importers and assessments on imports of cotton will be effective only if approved in a referendum as provided in section 8(b) or 8(c) of the Act, as added by section 504 of the bill.

Section 504—Requirements for referenda

Section 504 of the bill will amend section 8 of the Act by adding a new subsection (b) and (c) thereto.

The new section 8(b)(1) of the Act will require the Secretary, notwithstanding the provisions of sections 4 and 5 of the Act (regarding notice and hearing, and the finding required prior to the issuance of an order), not later than 150 days after the date of enactment of title V of the bill, and after notice and opportunity for public comment, to issue a proposed amendment to the order implementing the provisions of title V. Section 8(c)(1) will also require that the proposed amendment to become effective as provided in the new section 8(b)(2) of the Act.

The new section 8(b)(2) of the Act will require the Secretary, notwithstanding the provisions of the provisions of the current section 8 of the Act (redesignated as section 8(a) by the bill), to conduct, within a period not to exceed 8 months after the date of enactment of the bill, a referendum among persons who have been cotton producers and importers during a representative period, as determined by the Secretary, for the purpose of ascertaining if a majority of those voting approve the proposed amendment to the order issued by the Secretary under section 8(c)(1). The new section 8(b)(2) will also require the Secretary—

(A) to announce the results of the referendum within 30 days after the date of such referendum; and

(B) if the amendment is approved in the referendum, to publish the amendment to the order and regulations implementing the amendment provided for in section 8(b) within a period not to exceed 90 days from the date of announcement of the results of such referendum.

The new section 8(c)(1) will require the Secretary—

(A) notwithstanding the provisions of sections 4 and 5, once every five years after the date of the referendum provided for under section 8(b), to conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of the amendment to the order provided for in title V of the bill if such amendment is then in effect or, if such an amendment is not in effect, whether they favor approval of such an amendment;

(B) to make a public announcement of the results of the review described in (A) above within 60 days after each fifth anniversary date of the referendum provided for under section 8(b); and

(C) if the Secretary determines to provide for such a referendum, to conduct the referendum within 12 months after a public announcement of the determination to conduct the referendum.

The new section 8(c)(2) will require the Secretary, if the Secretary does not provide for such a referendum on the Secretary's own initiative, to conduct such a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum, except that, in counting such requests for a referendum, not more than 20 percent of such requests may be from producers from any one State. Producers and importers may sign up to request such a referendum at the county office of the Agricultural Stabilization and Conservation Service, or county extension agent, or by mailing such a request to the Secretary, as prescribed in regulations. Section 8(c)(2) will also require the signup period for such a referendum—

(A) to be for a period not to exceed 90 days;

(B) commence 60 days after the Secretary makes a public announcement of a determination not to provide for a referendum on the Secretary's own initiative; and

(C) be publicized by the Secretary and the Cotton Board immediately after such public announcement.

Finally, section 8(c)(2) will require the referendum to be held within 12 months after the end of the signup period, if requested by the requisite number of persons.

The new section 8(c)(3) will require that the amendment to the order provided for in section 8(c) not be effective if it is disapproved by a majority of cotton producers and importers of cotton voting in the referendum.

Section 505—Suspension and termination of orders

Section 505 will amend section 9(b) of the Act to provide for the representation of importers in a referendum to suspend or terminate an order under the Act.

Specifically, section 9(b) of the Act as amended will—

(1) authorize the Secretary to conduct a referendum at any time; and

(2) require the Secretary to hold a referendum on request of a number of producers and importers (if importers are subject to the order) equivalent to at least 10 percent of those persons voting in the most recent referendum

to determine whether cotton producers and importers subject to the order favor the termination or suspension of the order.

Section 9(b), as amended, will also require the Secretary to suspend or terminate the order at the end of the marketing year, as defined in the order, whenever the Secretary determines suspension or termination of the order is approved by a majority of producers and importers (if importers are subject to the order) voting in the referendum who, during a representative period determined by the Secretary—

(1) have been engaged in the production and importation of cotton; and

(2) produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

Section 506—Amendments to the order

Section 506 of the bill will amend section 10 of the Act to provide for procedures applicable to amendments to orders under the Act.

The new section 10(a) of the Act will require, except as provided in section 10(b) of the Act, the provisions of the Act applicable to orders to be applicable to amendments to orders.

The new section 10(b) will prohibit any amendment to an order issued under the Act from being effective unless the Secretary determines that—

(1) with respect to an amendment referred to in section 8(b) or (8)(c) of the Act, the amendment is approved by producers and importers of cotton as provided in such section; or

(2) with respect to any other amendment, that the amendment is approved by a majority of cotton producers and importers subject to the order voting in the referendum.

The new section 10(c) will prohibit the disapproval of any amendment to an order issued under the Act from being deemed to invalidate such order.

Section 507—Producer refunds

Section 507 of the bill will amend section 11 of the Act by adding a new subsection (b) to provide for the termination of the Cotton Board's authority to process applications for refunds if provided for in an amendment to the order approved by a majority of producers and importers voting in a referendum.

The new section 11(b) will require that the right of a producer to demand a refund under section 11(a) (the current section 11 of the Act) will—

(1) terminate if the proposed amendment of the order implementing title V of the bill is approved in the referendum provided for under the new section 8 of the Act;

(2) terminate 30 days after the date the Secretary announces the results of such referendum, if such proposed amendment is approved; and

(3) be reinstated if such amendment should be disapproved in any subsequent referendum.

Section 508—Definitions

Section 508 of the bill will amend section 17 of the Act to provide for the current definitions of "cotton" and "handler" to provide for imports of cotton, and to define "import" and "importer" for purposes of the Act.

Section 580(1) of the bill will amend section 17(c) of the Act to provide that the term "cotton", as used in the Act—

(A) will include imports of upland cotton; and

(B) will not, however, include any entry of imported cotton by an importer that has a value or weight less than any de minimis figure established in accordance with regulations issued by the Secretary. Section 17(c), as amended, will require any such de minimis figure to be established so as to minimize the burden in administering the assessment provision but still to provide for the maximum participation of imports of cotton in the assessment provisions of the Act.

Section 508(2) of the bill will amend section 17(d) of the Act to provide that, as used in the Act, the term "handler", for the purposes of section 3 (requiring the Secretary to issue and periodically amend cotten research and promotion orders), section 6(c) (requiring the maintenance and availability for inspection of books and records, and the filing of reports under the Act) and section 13 (regarding the enforcement of any order or regulation issued pursuant to the Act), will include any person who imports cotton, including de minimis amounts of cotton described in section 17(c), as amended by the bill.

Section 508(3) will add a new section 17(h) to the Act to provide that—

(A) the term "importer" will mean any person who enters, or withdraws from warehouse, cotton produced outside the United States for consumption in the customs territory of the United States; and

(B) the term "import" will mean any such entry, or withdrawal from warehouse, of any such cotton.

TITLE VI—HONEY

Section 601—Short title

Section 601 of the bill will provide that title VI of the bill may be cited as the "Honey Research, Promotion, and Consumer Information Act Amendments of 1990".

Section 602—Definitions

Section 602 of the bill will amend section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 et seq; hereafter referred to as the "Act"). Section 3 of the Act prescribes the definitions of terms used in the Act.

Section 602(1) will amend section 3(8) of the Act to clarify the definition of "importer" is consistent with the person who is listed in the import records of the United States as the importer of record for honey or honey products subject to the provisions of the Act, in order to facilitate the work of the Honey Board in administering the honey research, promotion, and consumer information program under the Act. Currently, the importer of record for each

import shipment of honey is listed on the Customs Service "Entry Summary", form 7501. With this amendment to the definition of the term "importer", the Honey Board should be able easily to identify who is an importer under the Act by simply referring to the names of such importers listed on Customs Service form 7501 as the importer of record. The Committee expects that the Customs Service will continue to cooperate with the Honey Board in making this information readily available for the limited purpose fo verifying the identity of such importers and that such importers are paying any assessments owed under the Act.

Section 602(2) will add a new section 3(18) to the Act to provide that, as used in the Act, the term "exporter" means any person who exports honey or honey products from the United States.

Section 603—Required terms in orders

Section 603 of the bill will amend section 7 of the Act, regarding the terms required to be included in an order issued under the Act.

Section 603(1)(A) will amend section 7(c)(2)(C) of the Act to require that, of the thirteen members of the Honey Board authorized under the Act, two members must be either importers or exporters, of which at least one will be required to be an importer. The Committee has been informed that the field of qualified importers eligible to serve on the Board is limited and it will be difficult to replace current importer members and alternates when they step down. Also, in recent years honey imports have been reduced while exports have increased. If these trends continue, it might become appropriate to substitute an exporter for an importer on the Board.

The new section 7(c)(2)(C) will also require that such importer or exporter representatives be appointed by the Secretary of Agriculture (hereafter referred to as the "Secretary") from nominations submitted by the National Honey Nominations Committee (hereafter referred to as the "Nominations Committee") established under section 7(b)(1) of the Act, as such nominations are selected by the Nominations Committee from among recommendations made by industry organizations representing importer and exporter interests.

Section 603(1)(B) will amend section 7(c)(2) of the Act to clarify that the Nominations Committee is required to submit nomiantions to the Secretary for only one alternate for each member of the Honey Board.

Section 603(1)(C) will amend section 7(c)(2) of the Act to prohibit any producer-packer [4] who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced from being eligible for nomination or appointment to the Honey Board as a producer described in section 7(c)(2)(A) of the Act, or as an alternate to such producer on the Honey Board. This provision is intended to ensure that a person who is predominately a packer (i.e. a handler) of honey is not seated on the Board as a producer representative, as this would effectively reduce producer representation on the Board.

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[4] A "producer-packer" is defined in section 3(9) of the Act as any person who is both a producer and a handler of honey. A handler of honey is defined in section 3(6) and 3(7) of the Act as any person who sells, packages or processes honey.

Section 603(1)(D) will amend section 7(c)(4) of the Act to provide that a member of the Honey Board need not be automatically replaced by an alternate if, as a result of redistricting, the producer member or alternate is no longer from the region from which such person was appointed, in which case such member or alternate may serve out the term for which such person was appointed. This provision is necessary because producer districts are reviewed every five years and may be redrawn as a result of the review. This amendment will assure continuity on the Board by allowing Board members to continue to represent an area for a relatively brief period.

Section 603(2) will add a new section 7(k) to the Act to provide that any patent on any product, copyright on any material, or any invention, product formulation or publication developed through the use of funds collected by the Honey Board will be the property of the Honey Board, and to require that the funds generated from any such patent, copyright, invention, product formulation, or publication inure to the benefit of the Honey Board.

Section 604—Assessments

Section 604(a) will further amend section 7 of the Act with regard to assessment required under the Act.

Section 604(a)(1) will amend section 7(e)(1) of the Act by striking the authority for the Honey Board to increase the rate of assessment under the Act, and inserting language to provide that the rate of assessment on honey will be one cent per pound, with payment to be made in the manner described in section 9 of the Act, as amended by section 604(b) of the bill. This amendment will delete the authority in current to increase the assessment on honey to as much as 4 cents per pound.

Section 604(a)(2) will amend section 7(e)(2) of the Act regarding honey that is exempt from assessment under the Act.

The new section 7(e)(2)(A) will exempt from assessment under the order honey that is consumed at thome by the producer or importer or donated by the producer or importer to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sold. The exemption from assessment under section 7(e)(2) of current law is a general exemption for each producer or importer who produces or imports less than 6,000 pounds of honey during a year. The new section 7(e)(2)(A) will simplify administration of exemptions by eliminating exemptions where honey is sold to handlers or is placed under a price support loan with the Commodity Credit Corporation. When honey is sold to handlers or is placed under a price support loan, it moves into a normal stream of commerce where the assessment is automatically collected. Hence, under the new section 7(e)(2)(A), producers of less than 6,000 pounds of honey annually who sell such honey in normal commercial channels would not automatically be eligible for an exemption on such honey, as is the case under current law, but would be treated the same as other producers if they should seek a refund (if refunds remain available). It is the intent of the Committee that the exemption from the assessment provided for donated honey under the new section 7(e)(2)(A) not apply to donated honey that is later sold in a commercial outlet by a donee or a donee's assignee.

The Committee expects the Honey Board and the Secretary to develop procedures to ensure that this exemption is not abused or used to circumvent the payment of assessments on honey that is marketed, and to provide for the payment of the assessment to the Board for donated honey that is later sold contrary to the provisions of section 7(e)(2)(A).

The new section 7(e)(2)(B)(i) of the Act will provide that a producer, producer-packer, or importer who produces or imports during any year less than 6,000 pounds of honey will be eligible for an exemption during such year from paying an assessment on honey such person distributes directly through local retail outlets, as determined by the Secretary, during such year. This exemption is intended is intended to include direct sales of honey (at roadside stands and similar local outlets) by honey producers who do not sell such honey to handlers or place such honey under a price support loan with the Commodity Credit Corporation.

The new section 7(e)(2)(B)(ii) of the Act will provide that, in order to claim an exemption from an assessment under section 7(e)(2)(B), a person must submit an application to the Honey Board stating the basis on which the person claims the exemption for such year.

The new section 7(e)(2)(B)(iii) of the Act will require that if, after a person claims an exemption from assessments for any year under section 7(e)(2)(B) such person no longer meets the requirements for such an exemption, then such person must file a report with the Honey Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

The new section 7(e)(3) will provide that if a producer, producer-packer, or importer does not pay any assessments under this Act due to the applicability to such person of the exemptions from assessments provided in section 7(e)(2), then such producer, producer-packer, or importer may not be considered a producer or importer for purposes of voting in any referendum conducted under this Act during the period the person's exemption from all assessments is in effect. This new provision is intended to clarify that any person who is completely exempt from assessments may not vote in any referendum of honey producers and importers under the Act.

Section 604(b) of the bill will amend section 9 of the Act regarding the collection of assessments and the refund of such assessments under the Act.

Section 604(b)(1) will amend section 9(d) of the Act to require the Secretary, in any case in which a loan is made with respect to honey under the honey price support loan program established under the Agricultural Act of 1949, or successor statute, to provide for the assessment to be deducted from the disbursement of any loan funds made to the producer and for the amount of such assessment to be forwarded to the Honey Board.

The amended section 9(d) of the Act will also require the Secretary to provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds promptly after each occasion when an assessment is deducted from any such loan funds under this subsection. By contrast, the current section 9(d) requires the Secretary to provide the producer with proof of

payment of the assessment when such a loan is redeemed by the producer.

Section 604(b)(2) of the bill will amend section 9(f) of the Act to require persons receiving an exemption from assessments under the Act to maintain and make available for inspection by the Secretary such books and records as are required by the order and to file such reports as are required by the order. Current law required handlers, importers, and producers-packers responsible for payment of assessments to maintain such books and records and make such reports. The amendment to section 9(f) is designed to provide the Honey Board with the information necessary to properly enforce the exemption provisions of the Act.

Section 604(b)(3) will amend section 9(h) of the Act by redesignating the current section 9(h) as section 9(h)(1)(A) and to clarify that the amount of refunds of assessments made to an importer, as percentage of the total assessments collected from such importer, may not exceed the amount of refunds made to domestic producers, as a percentage of the total assessments collected from such domestic producers.

The new section 9(h)(1)(B) of the Act will provide that a producer that has obtained a honey price support loan under the Agricultural Act of 1949, or successor statute, may obtain a refund if the producer has submitted to the Honey Board the statement received by the producer under section 9(d) of the amount of assessment deducted from the load funds and has otherwise complied with this subsection, even though the loan with respect to which the assessment was collected may still be outstanding and final settlement has not been made. Under current law, refunds of assessments cannot be made on honey under price support loan with the commodity Credit Corporation until the time of final settlement of the loan, even when a portion of the honey under loan is redeemed by the producer prior to the muturity date of the loan. This can delay refunds to producers for months. The new section 9(h)(1)(B) is intended to correct this inequity.

The new section 9(h)(2) of the Act will provide that, with respect to the order in effect on the date of the enactment of the bill, following the referendum on such order required under section 13(b)(2) of the Act as amended by the bill, a producer or importer may obtain a refund of an assessment under such order as provided in paragraph 9(h)(1) only if the Secretary determines that the proposal to terminate refunds under the order is defeated in such referendum.

Section 604(b)(4) will add a new section 9(i) to the Act, which will provide that if a first handler or the Secretary fails to collect an assessment from a producer under section 9 of the Act, the producer shall be responsible for the payment of the assessment to the Honey Board.

Section 605—First reconfirmation referendum

Section 605(a) of the bill will amend section 13(b) of the Act to clarify that the referendum specified in the new section 13(b)(2)(A) will be held in lieu of the first reconfirmation referendum mandated by the current section 13(b), which is redesignated as section 13(b)(1). Section 13(b)(1), as so redesignated, will also be amended to

clarify that the Secretary must conduct the reconfirmation referendum required under such section to determine whether a majority of producers favor the termination or suspension of the order.

Section 605(a)(3) will add a new section 13(b)(2)(A) to the Act to provide that, in lieu of the first referendum otherwise required to be conducted under section 13(b)(1) for the order in effect on the date of the enactment of the bill, the Secretary must conduct a referendum to determine if honey producers and importers favor—

(i) the continuation of the order; and

(ii) termination of the authority for producers and importers to obtain a refund of assessments under section 9(h)(1).

The new section 13(b)(2)(A) will also require the referendum to be conducted at the time the first referendum otherwise required under section 13(b)(1) would have been conducted, except for the operation of section 13(b)(2).

The Secretary should conduct the referendum required under section 13(b)(2)(A) in such a fashion that honey producers and importers will be able to cast a "yes" vote to indicate their support for the continuation of the order and a "yes" vote to indicate their support for the termination of the authority for producers and importers to obtain a refund of assessments under section 9(h)(1). However, these are to be presented on any ballot as two separate questions.

The new section 13(b)(2)(B)(i) of the Act will require the Secretary to terminate an order issued under the Act at the end of the marketing year during which such referendum is conducted, if the Secretary determines that termination of the order is approved or favored by not less than a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum.

The new section 13(b)(2)(B)(i) of the Act will require that if the Secretary determines that termination of the authority for producers and importers to receive refunds of assessment under section 9(h)(1) is favored or approved by a majority of the producers and importers voting in such referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum, then the Secretary must amend such order as necessary to reflect the vote of producers and importers. Such amendment to the order will be required to become effective on the date it is issued, but in no case more than 180 days after the conduct of such referendum.

Section 605(b) of the bill will make technical and conforming amendments to section 13(d) of the Act, consistent with the amendments made to section 13(b) of the Act by section 605(a) of the bill.

Section 606—Investigations and power to subpoena

Section 606 of the bill add a new section 11A to authorize the Secretary to conduct certain investigations and to issue subpoenas under specified circumstances. This new section is similar to the investigatory and subpoena provisions of other promotion and research statutes, and will facilitate effective operation of the honey

research, promotion, and consumer information order under the Act.

The new section 11A(a) of the Act will authorize the Secretary to make such investigations as the Secretary deems necessary—

(1) for the effective administration of the Act; or

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of the Act, or of any order, rule, or regulation issued under the Act.

The new section 11A(b)(1) will authorize the Secretary, for the purpose of an investigation made under section 11A(a), to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any plae in the United States.

The new section 11A(b)(2) will authorize the presiding officer of an administrative hearing held under section 10 or 11 of the Act to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

The new section 11A(c) will authorize the Secretary, in case of contumacy by, or refusal to obey a subpoena issued to, any person, to invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried out, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under section 11A(b). Section 11A(c) will also authorize the court to issue an order requiring such person to comply with such a subpoena.

The new section 11A(d) will permit a court issuing an order under section 11A(c) of the Act to punish any failure to obey such order of the court as a contempt thereof.

The new section 11A(e) will provide that the service of process in any case under section 11A may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

The new section 11A(f) will require any hearings held under section 11A to be held within the judicial district where such person resides or has a principal place of business.

Section 607—Conforming amendment to order

Section 607 of the bill will require the Secretary, notwithstanding any provision of the Act, after notice and opportunity for public comment, to issue an amendment to the order in effect under the Act on the date of the enactment of the bill to conform such order to the amendments made by the bill. Section 607 will further require that the amendment to the order will become effective on the date of its publication in the Federal Register without a referendum thereon (except for the referendum specifically provided for under section 13(b)(2) of the Act as added by section 605 of the bill). Finally, section 607 will require the Secretary to issue such amendment to the order in final form not later than 150 days after the date of the enactment of the bill.

COMMITTEE CONSIDERATION

I. HEARINGS

On July 19, 1989, the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition held a public hearing in Washington, D.C., to review H.R. 1776, the Fresh Lime Research, Promotion, and Consumer Information Act.

On July 25, 1989, the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition held a public hearing in Washington, D.C., to review H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act and H.R. 2257, the Potoato Research and Promotion Act Amendments of 1989.

On October 4, 1989, the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition held a public hearing in Washington, D.C., to review H.R. 3387, the Pecan Promotion and Research Act of 1989.

II. SUBCOMMITTEE CONSIDERATION

On November 15, 1989, Mr. Hatcher, for himself and others, introduced H.R. 3664, the Omnibus Agricultural Commodity Promotion and Research Act of 1989, which incorporated the provisions of H.R. 1776, H.R. 2187, H.R. 2257, and H.R. 3387.

On November 16, 1989, the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition met, pursuant to notice, to consider H.R. 3664, the Omnibus Agricultural Commodity Promotion and Research Act of 1989.

Following explanation of the bill, Mr. Hatcher offered a substitute amendment to the potato research and promotion title of the bill that had been recommended by the Department of Agriculture, which was designed to more efficiently incorporate the improvements made by the title into law. Following Mr. Hatcher's explanation of the substitute, the amendment was approved without objection.

Mr. Emerson moved that H.R. 3664, as amended, be reported to the full Committee with the recommendation that it do pass. The Subcommittee approved the motion by a roll call vote of 9 yeas to 0 nays.

III. FULL COMMITTEE CONSIDERATION

On Thursday, April 19, 1990, the Committee on Agriculture met, pursuant to notice, to consider H.R. 3664. Chairman de la Garza called the meeting to order and, without objection, the Subcommittee on Department Operations, Research, and Foreign Agriculture was discharged from further consideration of the bill.

Chairman de la Garza offered an amendment in the nature of a substitute and asked unanimous consent that it be considered as the original text of the bill for purposes of amendment. The request was agreed to without objection and discussion on the bill followed.

Mr. Combest was recognized and offered an amendment, on behalf of himself and Mr. Huckaby, to add a title V, entitled the Cotton Research and Promotion Act Amendments of 1990, to the bill. After discussion the Huckaby-Combest amendment was approved by a voice vote.

Mr. Stenholm was recognized and he stated that he had hoped to offer an amendment to improve the Honey Research, Promotion, and Consumer Information Act but that continuing disagreement within the honey industry prevented the attainment of an industry-wide consensus on such an amendment. Mr. Stenholm advised the Committee that he would offer such an amendment to an appropriate legislative vehicle in the near future if such a consensus could be reached.

By voice vote in the presence of a quorum, H.R. 3664 was then ordered favorably reported to the House.

On Wednesday, June 13, 1990, the Committee on Agriculture met, pursuant to notice, to reconsider H.R. 3664. Chairman de la Garza called the meeting to order and recognized Mr. Hatcher.

Mr. Hatcher asked unanimous consent that H.R. 3664 be reconsidered by the Full Committee for the limited purpose of considering an amendment to the bill by Mr. Stenholm. Without objection the unanimous consent request was granted and Mr. Stenholm was recognized to explain the amendment.

Mr. Stenholm indicated that an amendment to improve the Honey Research, Promotion, and Consumer Information Act had already been approved by the Committee as an amendment to H.R. 3950. Mr. Stenholm asked unanimous consent that this same language approved by the Committee for inclusion in H.R. 3950 also be included in H.R. 3664.

Mr. Hatcher, the Chairman of the Subcommittee on Domestic Marketing, Consumer Relations and Nutrition, and Mr. Emerson, the Ranking Minority member of the Subcommittee, both indicated that they had no objection to the inclusion of the amendment in H.R. 3664.

Without objection, the unanimous consent request by Mr. Stenholm that the language to improve the Honey Research, Promotion, and Consumer Information Act be included in H.R. 3664 was agreed to. Mr. Stenholm then moved that H.R. 3664, as amended, be ordered favorably reported to the House. By voice vote in the presence of a quorum, the motion was agreed to.

Administration Position

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 3664, as amended, titled the "Omnibus Agricultural Commodity Promotion and Research Act of 1990".

Budget Act Compliance (Section 308 and Section 403)

The provisions of clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 1990.

Hon. E DE LA GARZA,
Chairman, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3664, the Omnibus Agricultural Commodity Promotion and Research Act of 1990. This supersedes the cost estimate prepared on May 2, 1990 to reflect subsequent changes in the legislation.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 3664.
2. Bill title: Omnibus Agricultural Commodity Promotion and Research Act of 1990.
3. Bill status: As ordered reported by the House Committee on Agriculture, June 13, 1990.
4. Bill purpose: H.R. 3664 authorizes new commodity promotion programs, funded through checkoffs, for pecans, mushrooms, and limes; amends the potato and cotton programs to apply assessments to importers as well as domestic producers; and provides for a referendum of honey producers on whether to eliminate the refund of assessments to producers.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorizations:					
Estimated authorization level	0.2	—	—	—	—
Estimated outlays	0.2	—	—	—	—
Director spending:					
Estimated budget authority	—	−3.0	−2.0	−2.0	−2.0
Estimated outlays	—	−3.0	−2.0	−2.0	−2.0

The costs of this bill fall within budget function 350.

Basis of Estimate: In implementing the commodity promotion programs, the Secretary of Agriculture would have some responsibility for initial administration, certification of members, conducting referenda, and other activities for which administrative costs would be incurred. Though there is provision for reimbursement of most costs by the commodity promotion groups, salary costs in connection with referenda are not covered for the pecan, mushroom, and lime promotion programs. CBO estimates that referenda for those programs would likely be held during fiscal year 1991 and the costs of such operations, subject to appropriation action, would be about $150,000 that year.

Subject to approval in a referendum, the bill would no longer allow the refunding of assessments farmers pay to the Cotton Board or the Honey Board, and would levy assessments on imports of raw cotton. These two provisions would increase the resources available to the Cotton Board (a nongovernmental entity) for cotton promotion activities. CBO estimates that the resulting increase in demand for cotton products would lead to small direct spending savings within the upland cotton program. Increased cotton use, beginning with the 1991 marketing year, is estimated to reduce Commodity Credit Corporation budget authority and outlays by $3 million in 1992 and by $2 million each year thereafter. CBO assumes that the cotton referendum will pass. If it does not pass, then the direct spending savings would not materialize. Outlays for the honey program are not expected to be significantly affected by the bill, as refunds were expected to be small. The other promotion programs are for commodities that do not receive federal price support payments; therefore, increased activity in those promotion programs would not affect federal spending.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On November 6, 1989, CBO transmitted to the Senate Committee on Agriculture, Nutrition and Forestry a cost estimate for S. 1729, a bill to reauthorize the Commodity Futures Trading Commission and to authorize several commodity promotion programs. H.R. 3664 would authorize some promotion programs that would be established by the Senate bill, but unlike S. 1729, would not impose assessments on the cotton content of imported products.

On May 2, 1990, CBO transmitted to the House Committee on Agriculture a cost estimate for H.R. 3664, as ordered reported on April 19, 1990. Subsequently, the Committee recalled the bill before filing and added Title VI, the Honey Research, Promotion, and Consumer Information Act Amendments of 1990. CBO estimates that the addition of this title does not affect the cost of the bill.

9. Estimate prepared by: Eileen Manfredi.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 3664, as amended, will have no inflationary impact on the national economy.

Oversight Statement

No summary of oversight findings and recommendations made by the Committee on Government Operaitons under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 3664, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the defini-

tion of clause 2(b)(1) of Rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

POTATO RESEARCH AND PROMOTION ACT

* * * * * * *

TITLE III—POTATO RESEARCH AND PROMOTION

This title may be cited as the "Potato Research and Promotion Act."

FINDINGS AND DECLARATION OF POLICY

SEC. 302. Potatoes are a basic food in the United States *and foreign countries*. They are produced by many individual potato growers in every State in the United States *and imported into the United States from foreign countries*. In 1966, there were one million four hundred and ninety-seven thousand acres of cropland in the United States devoted to the production of potatoes. [Approximately two hundred and seventy-five million hundredweight of potatoes have been produced annually during the past five years with an estimated sales value to the potato producers of $561,000,000.]

Potatoes and potato products move [, in a large part,] in the channels of interstate *or foreign* commerce, and potatoes which do not move in such channels directly burden or affect interstate commerce in potatoes and potato products. [All potatoes produced in the United States are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in potatoes and potato products.]

* * * * * * * *

Therefore, it is the declared policy of the Congress and the purpose of this title that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the financing, through adequate assessments on all potatoes harvested in the United States for commercial use *and imported into the United States from foreign countries*, and the carrying out of an effective and coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes [produced in the United States] *and potato products*.

DEFINITIONS

SEC. 303. As used in this title:

(a) The term "Secretary" means the Secretary of Agriculture.

(b) The term "person" means any individual, partnership, corporation, association, or other entity.

(c) The term "potatoes" means all varieties of Irish potatoes grown by producers in the [forty-eight contiguous] *50* States of the United States, *and grown in foreign countries and imported into the United States.*

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(g) The term "importer" means any person who imports tablestock, frozen, or processed potatoes for ultimate consumption by humans or seed potatoes into the United States.

AUTHORITY TO ISSUE A PLAN

SEC. 304. To effectuate the declared policy of this title, the Secretary shall, subject to the provisions of this title, issue and from time to time amend, orders applicable to [persons engaged in the handling of potatoes (hereinafter referred to as handlers)] *handlers and importers* and shall have authority to issue orders authorizing the collection of assessments on potatoes handled *or imported* under the provisions of this title, and to authorize the use of such funds to provide research, development, advertising, and promotion of potatoes in a manner prescribed in this title. Any order issued by the Secretary under this title shall hereinafter in this title be referrred to as a "plan." Any such plan shall be applicable to potatoes produced in the [forty-eight contiguous] *50* States of the United States *and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States.*

NOTICE AND HEARINGS

SEC. 305. When sufficient evidence is presented to the Secretary by [potato producers,] *interested persons,* or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this title, he shall give due notice and opportunity for a hearing upon a proposed plan. Such hearing may be [requested] by potato producers or by any other interested person or persons, including the Secretary,] *by any interested person, including the Secretary,* when the request for such hearing is accompanied by a proposal for a plan

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REQUIRED TERMS IN PLANS

SEC. 308. Any plan issued pursuant to this title shall contain the following terms and conditions:

(a) * * *

(b) Providing that the board shall be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection. *If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.* Representatives of producers shall be nominated by producers in such manner as may be prescribed by the Secretary. Public representatives shall be nominated by the board in such

manner as may be prescribed by the Secretary. If producers *or importers,* fail to select nominees for appointment to the board, or the board fail to nominate public representatives, the Secretary may appoint persons on the basis of representation as provided for in such plan. The requirement for inclusion of public representatives on the board shall not be subject to producer approval, *or to importer approval when importers are subject to a plan,* in a referendum.

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(e) Providing that the board shall recommend to the Secretary and the Secretary shall fix the assessment rate at not more than [one cent] 2 *cents* per one hundred pounds of potatoes handled; except that if approved by producers, *and importers when importers are subject to a plan,* pursuant to section 314, the rate of assessment shall not exceed one-half of 1 per centum of the immediate past ten-calendar-year United States average price received for potatoes by growers as reported by the Department of Agriculture.

(f) Providing that—

(1) funds collected by the board shall be used for research, development, advertising, or promotion of potatoes and patato products and such other expenses for the administration, maintenance, and functioning of the board, as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this title: *Provided,* That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval, *or importer approval when importers are subject to a plan,* in a referendum;

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[(g) Providing that, notwithstanding any other provisions of this title, any potato producer against whose potatoes any assessment is made and collected under authority of this title and who is not in favor of supporting the research and promotion program as provided for under this title shall have the right to demand and receive from the board a refund of such assessment: *Provided,* That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than ninety days, and upon submission of proof satisfactory to the board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefore.

[(h)] (*g*) Providing that the board shall, subject to the provisions of subsections (e) and (f) of this section, develop and submit to the Secretary for his approval any research, development, advertising, or promotion programs or projects, and that any such program or project must be approved by the Secretary before becoming effective.

[(i)] (*h*) Providing the board with authority to enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of research, development, advertis-

ing or promotion programs or projects, and the payment of the cost thereof with funds collected pursuant to this title.

[(j)] *(i)* Providing that the board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.

PERMISSIVE TERMS IN PLANS

SEC. 309. Any plan issued pursuant to this title may contain one or more of the following terms and conditions:

(a) * * *

* * * * * * *

(g) Providing that any potato producer or importer against whose potatoes any assessment is made and collected under authority of this title and who is not in favor of supporting the research and promotion program as provided for under this title shall have the right to demand and receive from the board a refund of such assessment. Such demand shall be made personally by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secreary, but in no event less than 90 days, and upon submission of proof satisfactory to the board that the producer or importer paid the assement for which refund is sought, and any such refund shall be made within 60 days after demand therefor.

(h) Providing for authority to assess imports of tablestock, frozen, or processed potatoes for ultimate consumption by humans and seed potatoes into the United States.

[g] *(i)* Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this title and necessary to effectuate the other provisions of such plan.

ASSESSMENTS

SEC. 310. (a)*(1)* Each handler designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes; and such handler may collect from any producer or deduct from the proceeds paid to any producer, on whose potatoes such assessment is made, any such assessment required to be paid by such handler. Such handler shall maintain a separate record with respect to each producer for whom potatoes were handled, and such records shall indicate the total quantity of potatoes handled by him including those handled for producers and for himself, shall indicate the total quantity of potatoes handled by him which are included under the terms of a plan as well as those which are exempt under such plan, and shall indicate such other information as may be prescribed by the board. To facilitate the collection and payment of such assessments, the board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in any State or area. No more than one such assessment shall be made on any potatoes.

(2) When importers are subject to a plan, each importer designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes. The assessment on imported tablestock, frozen, or processsed potatoes for ultimate consumption by humans, and seed potatoes shall be established by the board so that the effective assessment shall equal that on domestic production and shall be paid by the importer to the board at the time of entry into the United States. Each such importer shall maintain a separate record including the total quantity of tablestock, frozen, processed potatoes for ultimate consumption by humans, and seed potatoes imported into the United States that are included under the terms of the plan as well as those that are exempt under such plan, and shall indicate such other information as may be prescribed by the board. No more than one assessment shall be made on any imported potatoes.

(b) Handlers *and importers* responsible for payment of assessments under subsection (a) of this section shall maintain and make available for inspection by the Secretary such books and records as required by the plan and file reports at the time, in the manner, and having the content prescribed by the plan, to the end that information and data shall be made available to the board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of this title or of any plan or regulation issued pursuant to this title.

(c) All information obtained pursuant to subsection (a) and (b) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which he or any officer of the United States is a party, and involving the plan with reference to which the information to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit—

(1) the issuance of general statements based upon the reports of a number of handlers *or importers* subject to a plan if such statements do not identify the information furnished by any person, or

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INVESTIGATION AND POWER TO SUBPENA

SEC. 313. (a) The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this title or to determine whether [a handler or any other] *any* person has engaged or is engaging in any acts or practices which constitute a violation of any provision of this title, or of any plan, or rule or regulation issued under this title. For the purpose of any such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may

be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a handler, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce record, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. The site of any hearings held under ths section shall be within the judicial district where such [handler or other] person is an inhabitant or has his principal place of business.

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REQUIREMENT OF REFERENDUM

SEC. 314. (a) The Secretary shall conduct a referendum among producers, who during a representative period determined by the Secretary have been engaged in the production of potatoes, for the purpose of ascertaining whether the issuance of a plan is approved or favored by such producers. *When the issuance of a plan would subject importers to the terms and conditions of a plan, the Secretary also shall conduct the referendum among importers, who during a representative period determined by the Secretary have been engaged in the importation of potatoes, for the purpose of ascertaining whether the issuance of such plan is approved or favored by such importers.*

(b) No plan issued under this title shall be effective unless the Secretary determines that the issuance of such plan is approved or favored by not less than [two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the potatoes produced during the representative period by producers voting in such referendum, and by not less than a majority of the producers voting in such referendum] *a majority of the producers voting in such referendum or a majority of the producers and importers when the issuance of a plan would subject importer to the terms and conditions of a plan, voting in such referendum.*

(c) The failure of potatoe producers *and importers* to approve an amendment to any plan issued under this title shall not be deemed to invalidate such plan.

(d) The ballots and other information or reports which reveal or tend to reveal the vote of any producer or his production of potatoes, *or any importer or the volume of potatoes imported by such importer,* shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall upon conviction be subject to the penalties provided in section 310(c) above.

SUSPENSION OR TERMINATION OF PLANS

SEC. 315. (a) The Secretary shall, whenever he finds that a plan or any provision thereof obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the board or of 10 per centum or more of the potato producers, *or of the total number of producers and importers when importers are subject to a plan,* to determine if potato producers *and importers* favor the termination or suspension of the plan, and he shall terminate or suspend such plan at the end of the marketing year whenever he determines that such suspension or termination is favored by a majority of those voting in a referendum, and who produce *and import* more than 50 per centum of the volume of the potatoes produced [by the potato producers voting in the referendum] and imported by those voting in the referendum.

(c) The termination or suspension of any plan, or any provision thereof, shall not be considered the issuance of a plan within the meaning of this title.

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COTTON RESEARCH AND PROMOTION ACT

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LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Cotton is the basic natural fiber of the Nation. It is produced by many individual cottongrowers throughout the various cotton-producing States of the Nation *and also outside the United States.* Cotton moves [in large part] in the channels of interstate and foreign commerce and such cotton which does not move in such channels directly burdens or affects interstate commerce in cotton and cotton products. [All cotton produced in the United States is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.] The efficient production of cotton and the maintenance and expansion of existing markets and the development of new or imporved markets and uses is vial to the welfare of cottongrowers and those concerned with marketing, using, and processing cotton as well as the general economy of the Nation. [In the years since World War II, United States cotton and the products thereof have been confronted with intensive competition, both at home and abroad, from foreign-grown cotton and from other fibers, primarily manmade fibers. The great inroads on the market and uses for United States] *The great inroads on the market and uses for* cotton which have been made by manmade fibers have been largely the result of extensive research and promotion which have not been effectively matched by cotton research and promotion. The production and marketing of cotton by numerous individual farmers have prevented the development and carrying out of adequate and coordinated programs of research and pro-

motion necessary to the maintenance and improvement of the competitive position of, and markets for, cotton. Without an effective and coordinated method for assuring cooperative and collective action in providing for, and financing such programs, individual cotton farmers are unable adequately to provide or obtain the research and promotion necessary to maintain and improve markets for cotton.

* * * * * * *

It is therefore declared to be the policy of the Congress and the purpose of this Act that it is essential in the public interest through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development, financing through adequate assessments on all cotton [harvested] *marketed* in the United States *and on imports of cotton,* and carrying out an effective and continuous coordinated program of research and promotion designed to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for United States cotton.

* * * * * * *

REQUIRED TERMS IN ORDERS

SEC. 7. Order issued pursuant to this Act shall contain the following terms and conditions:

(a) Providing for the establishment and selection by the Secretary, of a Cotton Board, and defining its powers and duties, which shall include only the powers:

(1) To administer such order in accordance with its terms and provisions;

(2) To make rules and regulations to effectuate the terms and provisions of such order, including the designation of the [handler] *person* responsible for collecting the [producer] *person* assessment;

(3) To receive, investigate, and report to the Secretary complaints of violations of such order; and

(4) To recommend to the Secretary amendments to such order.

(b) Providing that the Cotton Board shall be composed of *(1)* representatives of cotton producers selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing State, as certified pursuant to section 14 of this Act, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible producer organizations, from nominations made by producers in the manner authorized by the Secretary, so that the representation of cotton producers on the Board for each cotton-producing State shall reflect, to the extent practicable, the proportion which that State's marketings of cotton bears to the total marketings of cotton in the United States[: *Provided, however,* That each cotton-producing State shall be entitled to at least one representative on the Cotton Board. The secretary may appoint a number of consumer advisors to the Cotton Board not to exceed 15 per centum of the membership of the Cotton Board. The

Cotton Board shall reimburse the consumer advisors for expenses incurred in attending meetings of the Board in the same manner as the Cotton Board members.], *and (2) when imports of cotton are subject to an order, an appropriate number of representatives, as determined by the Secretary, of importers of cotton on which assessments are paid under this Act. Such importer representatives shall be appointed by the Secretary after consultation with organizations representing importers, as determined by the Secretary. Each cotton-producing State shall be entitled to at least one representative on the Cotton Board.*

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[(e) Providing that the producer or other person for whom the cotton is being handled shall pay to the handler of cotton designated by the Cotton Board pursuant to regulations issued under the order and that such handler of cotton shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, an assessment prescribed by the order, on the basis of bales of cotton handled, for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board under the order, during any period specified by him, and for reimbursing the Secretary (1) for expenses not to exceed $200,000 incurred by him in connection with any referendum conducted under section 8, and (2) for administrative costs incurred by the Secretary for supervisory work up to 5 employee years after an order or amendment to an order has been issued and made effective. To facilitate the collection and payment of such assessments, the Cotton Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in any State or area, except that no more than one such assessment shall be made on any bale of cotton, unless specifically authorized by provisions of this subsection. The rate of assessment prescribed by the order shall be $1 per bale of cotton handled but, subject to approval in a referendum as provided in section 8, the Secretary shall issue an amendment to the order which shall provide that, in each marketing year, the rate shall be supplemented by an additional per bale amount to be collected or paid as provided in this subsection, such amount to be at a rate as prescribed in the amendment to the order, but not to exceed 1 per centum of the value of cotton as determined by the Cotton Board and the Secretary. Neither the amendment to the order authorized by the foregoing provisions nor the disapproval of such amendment in a referendum shall operate to decrease or otherwise affect the amount of the assessment of $1 per bale in effect under the order published in the Federal Register on December 31, 1966. No authority under this Act may be used as a basis to advetise or solicit votes in any referendum relating to the rate of assessment with fudns collected under this Act. The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the serveral district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy: *Provided,* That the remedies provided in this section shall be in ad-

dition to, and not exclusive of, the remedies provided for elsewhere in this Act or now or hereafter existing at law or in equity.]

(e)(1) Providing that—

(A) the producer or other person for whom the cotton is being handled shall pay to the handler of such cotton designated by the Cotton Board pursuant to regulations issued under the order;

(B) such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board; and

(C) each importer shall pay to the Cotton Board on imports of cotton, an assessment prescribed by the order, on the basis of bales of cotton handled or imported. The assessment shall cover such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board under the order, during any period specified by the Secretary.

(2) The order shall provide for reimbursing the Secretary—

(A) for expenses not to exceed $300,000 incurred by the Secretary in connection with any referendum conducted under section 8; and

(B) for administrative costs incurred by the Secretary for supervisory work up to 5 employee years after an order or amendment to an order has been issued and made effective.

There shall also be included in the order a provision for reimbursing any agency of the Federal Government that assists in administering the import provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

(3) To facilitate the collection and payment of such assessments, the Cotton Board may designate different handlers or importers or classes of handlers or importers to recognize differences in marketing practices or procedures utilized in any State or area, except that no more than one such assessment shall be made on any bale of cotton, unless specifically authorized by provisions of this subsection.

(4) The rate of assessment prescribed by the order shall be $1 per bale of cotton handled, supplemented by an additional per bale amount not to exceed 1 percent of the value of cotton as determined by the Cotton Board and the Secretary. The rate of assessment on imports of cotton shall be determined in the same manner as the rate of assessment per bale of cotton handled, and the value to be placed on cotton imports for the purpose of determining the assessment on such imports shall be established by the Secretary in a fair and equitable manner.

(5) No authority under this Act may be used as a basis to advertise or solicit votes in any referendum relating to the rate of assessment with funds collected under this Act.

(6) The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy. The remedies provided in this section shall be in addition to, and not exclusive of, the remedies provided for elsewhere in this Act or now or hereafter existing at law or in equity.

(7) The provisions of this subsection and subsection (b) shall not apply to cottonseed and the products derived from cotton and its seed.

(8) The provisions of this subsection relating to importers and assessments on imports of cotton shall be effective only if approved in a referendum as provided in section 8(b) or 8(c).

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REQUIREMENT OF REFERENDUM AND COTTON PRODUCER APPROVAL

SEC. 8. *(a)* The Secretary shall conduct a referendum among persons who, during a representative period determined by the Secretary, have been engaged in the production of cotton for the purpose of ascertaining whether the issuance of an order is approved or favored by producers. No order issued pursuant to this Act shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the cotton produced during the representative period by producers voting in such referendum and by not less than a majority of the producers voting in such referendum.

(b)(1) Notwithstanding the provisions of sections 4 and 5, not later than 150 days after the date of enactment of the Cotton Research and Promotion Act Amendments of 1990, and after notice and opportunity for public comment, the Secretary shall issue a proposed amendment to the order implementing the provisions of such Act, which shall become effective as provided in paragraph (2).

(2) Notwithstanding the provisions of subsection (a), the Secretary shall, within a period not to exceed 8 months after the date of enactment of the Cotton Research and Promotion Act Amendments of 1990, conduct a referendum among persons who have been cotton producers and importers during a representative period, as determined by the Secretary, for the purpose of ascertaining if a majority of those voting approve the proposed amendment to the order issued by the Secretary under paragraph (1). The Secretary shall announce the results of the referendum within 30 days after the date of such referendum. If the amendment is approved in the referendum, within a period not to exceed 90 days from the date of announcement of the results of such referendum, the Secretary shall publish the amendment to the order and regulations implementing the amendment provided for in this subsection.

(c)(1) Notwithstanding the provisions of sections 4 and 5, once every five years after the date of the referendum provided for under subsection (b), the Secretary shall conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of the amendment to the order provided for in the Cotton Research and Promotion Act Amendments of 1990 if such amendment is then in effect or, if such an amendment is not in effect, whether they favor approval of such amendment. The Secretary shall make a public announcement of the results of the review within 60 days after each fifth anniversary date of the referendum provided for under subsection (b). If the Secretary determines to provide for such a referendum, the Secretary

shall conduct the referendum within 12 months after a public announcement of the determination to conduct the referendum.

(2) If the Secretary does not provide for such a referendum on the Secretary's own initiative, the Secretary shall conduct such a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum, except that, in counting such requests for a referendum, not more than 20 percent of such requests may be from producers from any one State. Producers and importers may sign up to request such a referendum at the county office of the Agricultural Stabilization and Conservation Service, or county extension agent, or by mailing such a request to the Secretary, as prescribed in regulations. The signup period shall be for a period not to exceed 90 days, shall commence 60 days after the Secretary makes a public announcement of a determination not to provide for a referendum on the Secretary's own initiative, and shall be publicized by the Secretary and the Cotton Board immediately after such public announcement. The referendum shall be held within 12 months after the end of the signup period, if requested by the requisite number of persons.

(3) The amendment to the order provided for in this subsection shall not be effective if it is disapproved by a majority of cotton producers and importers of cotton voting in the referendum.

SUSPENSION AND TERMINATION OF ORDERS

SEC. 9. (a) * * *

[(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of cotton producers voting in the referendum approving the order, to determine whether cotton producers favor the termination or suspension of the order, and he shall suspend or terminate such order at the end of the marketing year, as defined in the order, whenever he determines that suspension or termination of the order is approved or favored by a majority of the producers of cotton voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of cotton, and who produced more than 50 per centum of the volume of the cotton produced by the cotton producers voting in the referendum.]

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of a number of producers and importers (if subject to the order) equivalent to at least 10 percent of those persons voting in the most recent referendum, to determine whether cotton producers and importers subject to the order favor the termination or suspension of the order. The Secretary shall suspend or terminate the order at the end of the marketing year, as defined in the order, whenever the Secretary determines suspension or termination of the order is approved by a majority of producers and importers (subject to the order) voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the production and importation of cotton and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

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[PROVISIONS APPLICABLE TO AMENDMENTS

[SEC. 10. The provisions of this Act appliable to orders shall be applicable to amendments to orders.]

PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 10. (a) Except as provided in subsection (b), the provisions of this Act applicable to orders shall be applicable to amendments to orders.

(b) No amendment to an order issued under this Act shall be effective unless the Secretary determines that—

(1) with respect to an amendment referred to in section 8(b) or 8(c), the amendment is approved by producers and importers of cotton as provided in such section; or

(2) with respect to any other amendment, that the amendment is approved by a majority of cotton producers and importers subject to the order voting in the referendum.

(c) The disapproval of any amendment to an order issued under this Act shall not be deemed to invalidate such order.

PRODUCER REFUNDS

SEC. 11. [Notwithstanding any other provision] *(a) Notwithstanding any other section and except as provided in subsection (b),* of this Act, any cotton producer against whose cotton any assessment is made and collected from him under the authority of this Act and who is not in favor of supporting the research and promotion program as provided for herein shall have the right to demand and receive from the Cotton Board a refund of such assessment: *Provided,* That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary, but in no event less than ninety days, and upon submission of proof satisifactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefor.

(b) The right of a producer to demand a refund under subsection (a) shall terminate if the proposed amendment of the order implementing the Cotton Research and Promotion Amendments Act of 1990 is approved in the referendum provided for under section 8. Such right shall terminate 30 days after the date the Secretary announces the results of such referendum if such proposed amendment is approved. Such right shall be reinstated if the amendment should be disapproved in any subsequent referendum.

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DEFINITIONS

SEC. 17. As used in this Act:

(a) The term "Secretary" means the Secretary of Agriculture.

(b) The term "person" means any individual, partnership, corporation, association, or any other entity.

(c) The term "cotton" means *(1)* all upland cotton harvested in the United States, and, except as used in section 7(e), includes cottonseed of such cotton and the products derived from such cotton

and [its seed.] *its seed and (2) imports of upland cotton. The term "cotton" shall not, however, include any entry of imported cotton by an importer that has a value or weight less than any de minimis figure established in accordance with regulations issued by the Secretary. Any de minimis figure established under this paragraph shall be such as to minimize the burden in administering the assessment provision but still provide for the maximum participation of imports of cotton in the assessment provisions of this Act.*

(d) The term "handler" means any person who handles cotton or cottonseed *or, for the purposes of sections 3, 6(c), and 13, any person who imports cotton, including de minimis amounts of cotton described in subsection (c),* in the manner specified in the order or in the rules and regulations issued thereunder.

* * * * * * *

(h)(1) the term "importer" means any person who enters, or withdraws from warehouse, cotton produced outside the United States for consumption in the customs territory of the United States.

(2) The term "import" means any such entry.

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HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT

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DEFINITIONS

SEC. 3. As used in this Act:

(1) * * *

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(8) The term "importer" means any person who imports honey or honey products into the United States or [who] acts as an agent, broker, or consignee for any person or nation that produces honey outside of the United States *and who is listed in the import records as the importer of record for such honey or honey products.*

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(18) The term "exporter" means any person who exports honey or honey products from the United States.

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REQUIRED TERMS OF AN ORDER

SEC. 7.(a) * * *

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(c)(1) The order described in subsection (a) shall provide for the establishment and appointment by the Secretary of a Honey Board in accordance with this subsection.

(2) The membership of the Honey Board shall consist of—

(A) seven members who are honey producers appointed from nominations submitted by the National Honey Nominations Committee, one from each of seven regions of the United

States which shall be established by the Secretary on the basis of the production of honey in the different areas of the country;

(B) two members who are handlers of honey appointed from nominations submitted by the Committee from recommendations made by industry organizations representing handler interests;

[(C) two members who are importers appointed form nominations submitted by the Committee from recommendations made by industry organizations representing importer interests;]

(C) two members who are either importers or exporters, of which at least one shall be an importer, appointed from nominations submitted by the Committee from recommendations by industry organizations representing importer and exporter interests;

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The Committee shall also [nominate an alternate or alternates] *submit nominations for an alternate* for each member of the Honey Board described in subparagraphs (A) through (D), and the Secretary shall appoint an alternate for the member described in subparagraph (E). Such alternates shall be appointed in the same manner as members are and shall serve only whenever the member is absent from a meeting or is disqualified. *However, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer described in subparagraph (A) or as an alternate to such producer.*

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(4) In the event any member of the Honey Board ceases to be a member of the category of members from which the member was appointed to the Honey Board, such person shall be automatically replaced by an alternate, *except that if, as a result of the adjustment of the boundaries of the regions established under paragraph (2)(A), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.*

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(e)(1) The Honey Board shall administer collection of the assessment provided for in this paragraph to finance the expenses described in subsections (d) and (f). [For the first year in which the plan is in effect, the assessment rate shall be $0.01 per pound, with payment to be made in the manner described in section 9. After the first year, the Honey Board may submit to the Secretary a requrest for an increase in the assessment rate not to exceed 0.5 cent per year, but at no time may the total assessment rate exceed $0.04 per pound.

[(2) A producer or producer-packer who produces, or handles, or produces and handles less than six thousand pounds of honey per year or an importer who imports less than six thousand pounds of honey per year shall be exempt from the assessment. In order to claim such an exemption, a person shall submit an application to

the Honey Board stating that their production, handling, or importation of honey shall not exceed six thousand pounds for the year for which the exemption is claimed.] *The assessment rate shall be $0.01 per pound, with payment to be made in the manner described in section 9.*

(2)(A) Honey that is consumed at home by the producer or importer or donated by the producer or importer to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sold shall be exempt from assessment under the order, except that donated honey that later is sold in a commercial outlet by a donee or a donee's assignee shall be subject to assessment on such sale.

(B)(i) A producer, producer-packer, or importer who produces or imports during any year less than 6,000 pounds of honey shall be eligible for an exemption in such year from paying an assessment on honey such person distributes directly through local retail outlets, as determined by the Secretary, during such year.

(ii) In order to claim an exemption under this subparagraph, a person shall submit an application to the Honey Board stating the basis on which the person claims the exemption for such year.

(iii) If, after a person claims an exemption from assessments for any year under this subparagraph, such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Honey Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

(3) If a producer, producer-packer, or importer does not pay any assessments under this Act due to the applicability to such person of the exemptions from assessments provided in paragraph (2), then such producer, producer-packer, or importer shall not be considered a producer or importer for purposes of voting in any referendum conducted under this Act during the period the person's exemption from all assessments is in effect.

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(k) Any patent on any product, copyright on any material, or any invention, product formulation or publication developed through the use of funds collected by the Honey Board shall be the property of the Honey Board. The funds generated from any such patent, copyright, invention, product formulation, or publication shall inure to the benefit of the Honey Board.

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COLLECTION OF ASSESSMENTS; REFUNDS

SEC. 9. (a) Except as provided by subsections (c), (d), [*(e), and (i),*] the first handler of honey shall be responsible for the collection from the producer, and payment to the Honey Board, of assessments authorized by this Act.

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[(d) In any case in which a loan is made with respect to any honey under the Honey Loan Price Support Program, the Secretary shall provide that the assessment shall be deducted from the

proceeds of the loan and that the amount of such assessment shall be forwarded to the Honey Board. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.]

(d) In any case in which a loan is made with respect to honey under the honey price support loan program established under the Agricultural Act of 1949, or successor statute, the Secretary shall provide for the assessment to be deducted from the disbursement of any loan funds made to the producer and for the amount of such assessment to be forwarded to the Honey Board. The Secretary shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds promptly after each occasion when an assessment is deducted from any such loan funds under this subsection.

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(f) Handlers, importers, and producer-packers responsible for payment of assessments, *and persons receiving an exemption from assessments under section 7(e)(2),* shall maintain and make available for inspection by the Secretary such books and records as are required by the order and file reports at the times, in the manner, and having the content prescribed by the order, so that information and data shall be made available to the Honey Board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of the Act or of any order or regulation issued pursuant to this Act.

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(h) [Any] *(1)(A) Except as otherwise provided in paragraph (2), any* producer or importer may obtain a refund of the assessment collected from the producer or importer if demand is made within the time and in the manner prescribed by the Honey Board and approved by the Secretary; except that, during any year, the amount of refunds made [to importers,] *to an importer,* as a percentage of total assessments collected [from importers] *from such importer,* shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Such refund shall be made by the Honey Board in June and December of each year.

(B) A producer that has obtained a honey price support loan under the Agricultural Act of 1949, or successor statute, may obtain a refund if the producer has submitted to the Honey Board the statement received under subsection (d) of the amount of assessment deducted from the loan funds and has otherwise complied with this subsection, even though the loan with respect to which the assessment was collected may still be outstanding and final settlement has not been made.

(2) With respect to the order in effect on the date of the enactment of this paragraph, following the referendum on such order required under section 13(b)(2), a producer or importer may obtain a refund of an assessment under such order as provided in paragraph (1) only if the Secretary determines that the proposal to terminate refunds under the order is defeated in such referendum.

(i) If a first handler or the Secretary fails to collect an assessment from a producer under this section, the producer shall be responsible for the payment of the assessment to the Honey Board.

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INVESTIGATIONS AND POWER TO SUBPOENA

SEC. 11A. (a) IN GENERAL.—The Secretary may make such investigations as the Secretary deems necessary—

(1) for the effective administration of this Act; or

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this Act, or of any order, rule, or regulation issued under this Act.

(b) POWER TO SUBPOENA.—(1) Investigation.—For the purpose of an investigation made under subsection (a), the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 10 or section 11, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, taked evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the Jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under this section shall be within the judicial district where such person resides or has a principal place of business.

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SUSPENSION AND TERMINATION

SEC. 13. (a) Whenever the Secretary finds that any order issued under this Act, or any provisions thereof, obstructs or does not tend to effectuate the declared purpose of this Act, the Secretary shall terminate or suspend the operation of such order or such provisions thereof.

(b) **[**Five**]** *(1) Except as otherwise provided in paragraph (2), five* years from the date on which the Secretary issues an other authorizing the collection of assessments on honey under provisions of

this Act, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the [continuation termination,] *termination* or suspension of the order.

(2)(A) In lieu of the first referendum otherwise required to be conducted under paragraph (1) for the order in the effect on the date of the enactment of this paragraph, the Secretary shall conduct a referendum to determine if honey producers and importers favor—

(i) the continuation of the order; and

(ii) termination of the authority for producers and importers to obtain a refund of assessments under section 9(h)(l).

The referendum shall be conducted at the time the first referendum otherwise required under paragraph (l) would have been conducted, except for the operation of this paragraph.

(B)(i) The Secretary shall terminate such order at the end of the marketing year during which such referendum is conducted, if the Secretary determines that termination of the order is approved or favored by not less than a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum.

(ii) If the Secretary determines that termination of the authority for producers and importers to receive refunds of assessments under section 9(h)(l) is favored or approved by a majority of the producers and importers voting in such referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum, then the Secretary shall amend such order as necessary to reflect the vote of producers and importers. Such amendment to the order shall become effective on the date it is issued, but in no case more than 180 days after the conduct of such referendum.

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(d) The Secretary shall terminate or suspend [such] *an* order at the end of the marketing year *in which a referendum is conducted under subsection (b) or (c)* whenever the Secretary determines that such suspension or termination [of the order] is favored by a majority of those voting in a referendum and that the producers and importers comprising this majority produce and import more than 50 per centum of the volume of honey produced and imported by those voting in the referendum.

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